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# ENVIRONMENTAL ASSESSMENT BOARD

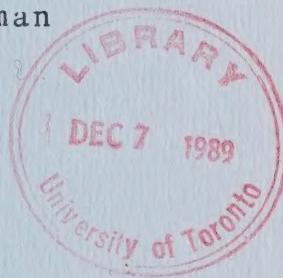
VOLUME: 163

DATE: Wednesday, November 29th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the  
Honourable Jim Bradley, Minister of the  
Environment, requiring the Environmental  
Assessment Board to hold a hearing with  
respect to a Class Environmental  
Assessment (No. NR-AA-30) of an  
undertaking by the Ministry of Natural  
Resources for the activity of timber  
management on Crown Lands in Ontario.

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Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Wednesday, November 29th,  
1989, commencing at 8:30 a.m.

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VOLUME 163

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.  
MR. ELIE MARTEL  
MRS. ANNE KOVEN

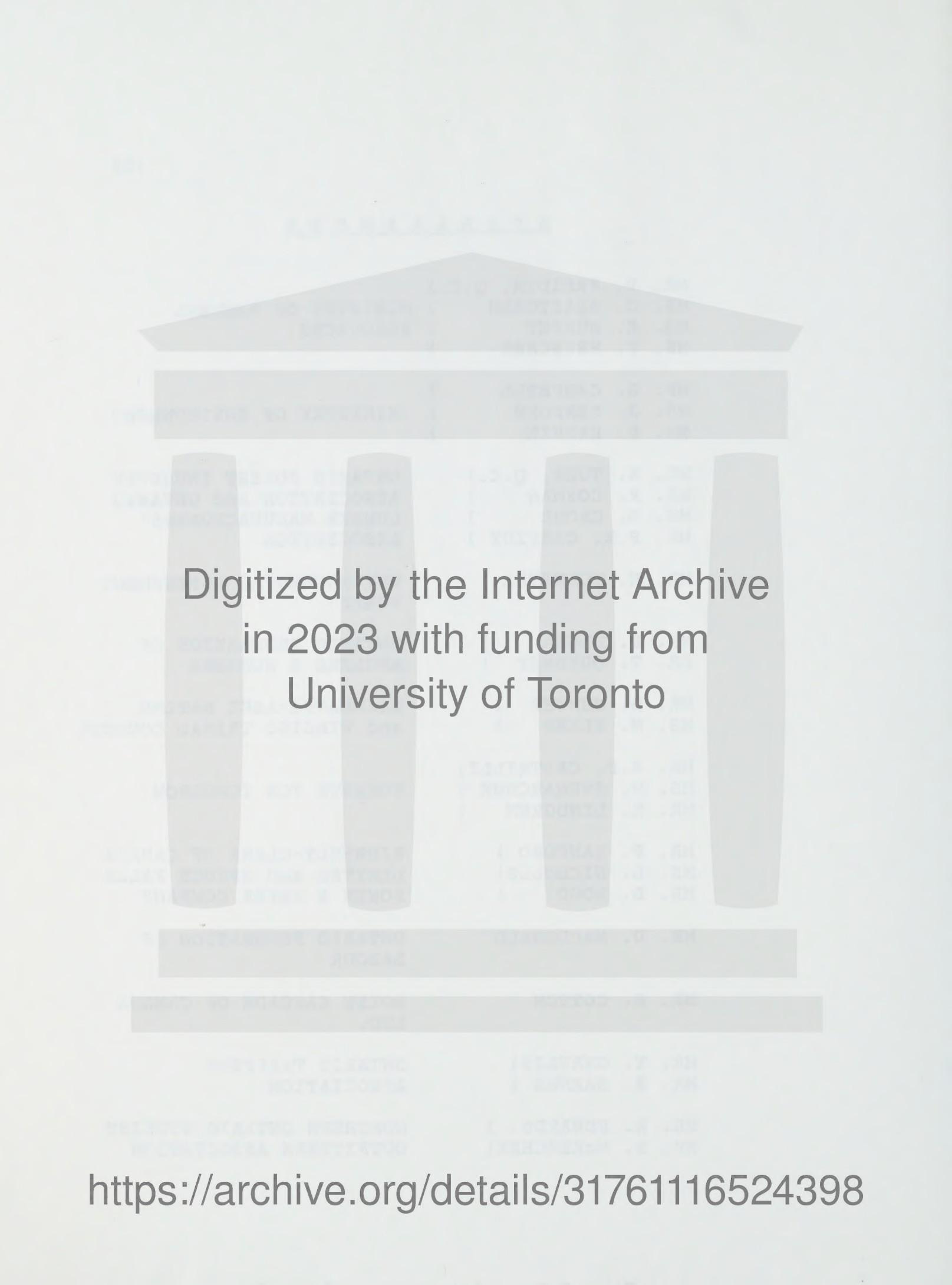
Chairman  
Member  
Member



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A P P E A R A N C E S

|                       |   |
|-----------------------|---|
| MR. V. FREIDIN, Q.C.) |   |
| MS. C. BLASTORAH )    | MINISTRY OF NATURAL                                 |
| MS. K. MURPHY )       | RESOURCES   |
| MS. Y. HERSCHER )     |   |
| MR. B. CAMPBELL )     |   |
| MS. J. SEABORN )      | MINISTRY OF ENVIRONMENT                             |
| MS. B. HARVIE )       |   |
| MR. R. TUER, Q.C.)    |   |
| MR. R. COSMAN )       | ONTARIO FOREST INDUSTRY                             |
| MS. E. CRONK )        | ASSOCIATION and ONTARIO                             |
| MR. P.R. CASSIDY )    | LUMBER MANUFACTURERS'                               |
|                       | ASSOCIATION   |
| MR. H. TURKSTRA       | ENVIRONMENTAL ASSESSMENT<br>BOARD                   |
| MR. E. HANNA )        |   |
| DR. T. QUINNEY )      | ONTARIO FEDERATION OF<br>ANGLERS & HUNTERS          |
| MR. D. HUNTER )       |   |
| MS. N. KLEER )        | NISHNAWBE-ASKI NATION<br>and WINDIGO TRIBAL COUNCIL |
| MR. J.F. CASTRILLI)   |   |
| MS. M. SWENARCHUK )   | FORESTS FOR TOMORROW                                |
| MR. R. LINDGREN )     |   |
| MR. P. SANFORD )      |   |
| MS. L. NICHOLLS)      | KIMBERLY-CLARK OF CANADA                            |
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| MR. R. BARNES )       | ONTARIO TRAPPERS<br>ASSOCIATION                     |
| MR. R. EDWARDS )      |   |
| MR. B. McKERCHER)     | NORTHERN ONTARIO TOURIST<br>OUTFITTERS ASSOCIATION  |



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APPEARANCES: (Cont'd)

|   |  |
|---|--|
| MR. L. GREENSPOON)<br>MS. B. LLOYD )          | NORTHWATCH   |
| MR. J.W. ERICKSON, Q.C.)<br>MR. B. BABCOCK )  | RED LAKE-EAR FALLS JOINT<br>MUNICIPAL COMMITTEE                |
| MR. D. SCOTT )<br>MR. J.S. TAYLOR)            | NORTHWESTERN ONTARIO<br>ASSOCIATED CHAMBERS<br>OF COMMERCE     |
| MR. J.W. HARBELL)<br>MR. S.M. MAKUCH )        | GREAT LAKES FOREST   |
| MR. J. EBBS                                   | ONTARIO PROFESSIONAL<br>FORESTERS ASSOCIATION                  |
| MR. D. KING                                   | VENTURE TOURISM<br>ASSOCIATION OF ONTARIO                      |
| MR. D. COLBORNE )<br>MS. S.V. BAIR-MUIRHEAD ) | GRAND COUNCIL TREATY #3  |
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| MR. H. GRAHAM                                 | CANADIAN INSTITUTE OF<br>FORESTRY (CENTRAL<br>ONTARIO SECTION) |
| MR. G.J. KINLIN                               | DEPARTMENT OF JUSTICE  |
| MR. S.J. STEPINAC                             | MINISTRY OF NORTHERN<br>DEVELOPMENT & MINES                    |
| MR. M. COATES                                 | ONTARIO FORESTRY<br>ASSOCIATION                                |
| MR. P. ODORIZZI                               | BEARDMORE-LAKE NIPIGON<br>WATCHDOG SOCIETY                     |



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APPEARANCES: (Cont'd)

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MR. M.O. EDWARDS

FORT FRANCES CHAMBER OF  
COMMERCE

MR. P.D. McCUTCHEON

GEORGE NIXON

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION



I N D E X   O F   P R O C E E D I N G S

| <u>Witness:</u>  | <u>Page No.</u> |
|--|-----------------|
| <u>JOHN EDWARD OSBORN,</u><br><u>JOHN CARY,</u><br><u>DAVID GORDON,</u><br><u>WILLIAM STRAIGHT,</u><br><u>DAVID EULER,</u><br><u>JAMES ALEXANDER MacLEAN,</u><br><u>TOM TWORZYANSKI, Resumed</u> | 28897           |
| Cross-Examination by Ms. Seaborn   | 28897           |
| Re-Direct Examination by Ms. Murphy  | 28973           |



I N D E X   O F   E X H I B I T S

| <u>Exhibit No.</u> | <u>Description</u>  | <u>Page No.</u> |
|--------------------|---|-----------------|
| 964                | Excerpt from Ministry of Natural Resources Act.   | 28896           |
| 965                | Excerpts from Fisheries Act.  | 28897           |
| 966                | Designation by Lynn McLeod, Minister of Natural Resources, dated November 3, 1989.  | 28897           |
| 967                | List of examples of efficiencies in answer to undertaking by MNR to OFIA/OLMA.  | 28897           |
| 968                | Letter dated September 14th from MNR to members of the public re: Domtgar/Armstrong management unit.  | 28948           |
| 969                | Memorandum from A.J. Stewart, Regional Director of Algonquin Region to district managers and Director of Leslie Frost Centre, dated September 26, 1989. | 28973           |



1           ---Upon commencing at 8:45 p.m.

2                         THE CHAIRMAN: Good morning. Be seated,  
3                         please.

4                         Ladies and gentlemen, we indicated last  
5                         night that we were going to consider the matters raised  
6                         by Mr. Colborne in terms of his statements of issue and  
7                         the scope or intended scope of his cross-examination.  
8                         We have given that some preliminary consideration and  
9                         we want to handle it in this fashion.

10                       The Board feels strongly about the fact  
11                         that with regard to Mr. Colborne's client or any other  
12                         party before the Board we cannot engage in areas which  
13                         the Board considers are beyond its jurisdiction to  
14                         provide any kind of remedy for that party. This  
15                         hearing is a very lengthy and complex proceeding and it  
16                         is not, in the Board's view, in the public interest to  
17                         extend the proceedings in terms of engaging in areas  
18                         which are clearly or which the Board determines is  
19                         beyond its jurisdiction.

20                       Accordingly, we do not feel, Mr.  
21                         Colborne, that we can rule on the areas that you wish  
22                         to cross-examine Panel 17 upon appropriately until we  
23                         have determined the issue concerning the licensing and  
24                         allocation matter that was raised yesterday, and  
25                         certain document was provided to the Board and to the

1                   parties by Mr. Freidin.

2                   The reason for that is, is that feel that  
3                   some of the areas that you indicated you intended to  
4                   cross-examine upon concern or may concern matters which  
5                   may or may not be within the Board's jurisdiction  
6                   depending upon its view of whether it has any  
7                   jurisdiction in the area of licensing or allocation.

8                   Now, we indicated yesterday that the  
9                   material that was provided to the parties should be  
10                  reviewed by the parties and discussions held by the  
11                  parties to determine on a voluntary basis, if they can,  
12                  if they were in agreement with Mr. Freidin's position;  
13                  if they are not in agreement with that position, then  
14                  the Board is prepared to hear submissions and determine  
15                  that issue.

16                  We might further add that we are fully  
17                  prepared to deal or to entertain the submissions and  
18                  evidence of any party with respect to alleged impacts  
19                  from any of the activities which are before the Board;  
20                  and without going through it, the four activities of  
21                  harvest, access, regeneration and maintenance, and any  
22                  impacts that might occur on any of the parties as a  
23                  result of the Ministry carrying out those activities,  
24                  whether or not the impacts are felt within the area of  
25                  the undertaking or, in some cases, outside the area of

1       the undertaking, the Board is prepared to deal with  
2       those issues. And those are issues which, in the  
3       Board's view, are properly before the Board and clearly  
4       within its jurisdiction.

5                  When we get to issues concerning  
6       entitlement and/or allocation or licensing, then we are  
7       entering into an area which is somewhat more clouded in  
8       terms of the Board having the jurisdiction to deal with  
9       those issues.

10                 So what we would like to do is have the  
11       parties attempt to consider Mr. Freidin's position on  
12       the allocation issue. If agreement cannot be reached  
13       by the parties, then the Board will entertain  
14       submissions on that probably at some point during the  
15       next two weeks and, in that case, it will be done in  
16       Toronto probably at the conclusion of one of the normal  
17       daily sessions dealing with Dean Baskerville.

18                 The Board will be unable to sit on the  
19       Friday which is, I believe, December 8th, which is the  
20       one day that we won't be sitting to hear Dean  
21       Baskerville.

22                 Now, Mr. Colborne, in the event that it  
23       has to come back before the Board for determination,  
24       this allocation matter, we will ensure that you have  
25       appropriate notice and it will probably be addressed in

1           the second week.

2                            MR. COLBORNE: Very well. Thank you, Mr.  
3                            Chairman.

4                            THE CHAIRMAN: So we can deal with that.

5                           With respect to the other issue that Mr.  
6                           Hanna raised in terms of the Board having the  
7                           jurisdiction or possibly having the jurisdiction to  
8                           comment or change the purpose of the undertaking, that  
9                           is a matter upon which the Board, in a preliminary way,  
10                          does not feel that it can entertain; however, it may be  
11                          willing to hear submissions on that in fairness to Mr.  
12                          Hanna.

13                         But it seems to the Board that the  
14                         proponent has clearly delineated the purpose of the  
15                         undertaking and we also have before the Board what the  
16                         undertaking itself is, and we believe there is some  
17                         jurisprudence on that as to the Board's powers to  
18                         change either the description of the undertaking  
19                         and/or, we would submit, the purpose of the  
20                         undertaking. And the Board is not at all convinced  
21                         that it has the jurisdiction to do that; however, it  
22                         may be willing to hear further submissions on that.

23                         I don't know whether Mr. Hanna is going  
24                         to bring that back formally to the Board but we shall  
25                         have to await his doing so, if he chooses to take that

1 route.

2                   With respect to the issue concerning the  
3 revised area of concern planning process which Ms.  
4 Seaborn alluded to yesterday, Ms. Murphy and Mr.  
5 Freidin, we don't know where you stand on that. There  
6 was an indication in an earlier panel that it was in  
7 the course of being revised and it would be brought  
8 back before the Board, at least that was our  
9 understanding. Is that not the case?

10                  MR. FREIDIN: I think the intention was  
11 to file by December the 15th a revised or a  
12 standardized form with an accompanying bulletin for the  
13 field. We are still on that schedule and hope to be  
14 able to meet it.

15                  THE CHAIRMAN: All right. Well, we will  
16 have to work in cross-examination of the parties on  
17 that at such time as it is filed and before the Board,  
18 because they will have the opportunity to cross-examine  
19 further on those changes.

20                  MR. FREIDIN: That is correct. And we  
21 intended to sort of I think have Mr. Bisschop and there  
22 is actually an outside chance that Mr. Kennedy may be  
23 back on that as well, but Mr. Bisschop for sure.

24                  THE CHAIRMAN: Okay. Ms. Seaborn, do you  
25 want to say something about that?

1                   MS. SEABORN: Yes, Mr. Chairman. Just in  
2 that regard, it would be our preference if that could  
3 be done during the evidence-in-chief on Panel 17 so  
4 that we are not into another scheduling situation of  
5 bringing back two other people, and it has been my  
6 understanding that that could be tacked on with Panel  
7 17.

8                   It may be after we look at it we are not  
9 going to have any questions, so that is why I would  
10 prefer to have a look at it and have it presented in  
11 that fashion and then if people want to cross-examine  
12 while they are doing their Panel 17 cross-examination,  
13 Mr. Bisschop will be back anyway.

14                  THE CHAIRMAN: All right. That sounds  
15 reasonable and we can arrange it in that fashion.

16                  We believe those were the outstanding  
17 issues. The Board will be issuing its direction  
18 regarding counsels' relationship with the media on  
19 Friday in Toronto and we will have a copy up here  
20 available as well.

21                  MR. FREIDIN: I am sorry, Mr. Chairman,  
22 could you repeat that?

23                  THE CHAIRMAN: We are going to be issuing  
24 our directions regarding counsels' relationship with  
25 the media on Friday in Toronto and we will have a copy

1           available up here for parties up here.

2           MR. CASSIDY: So that the parties can  
3         then obtain it from the Board's office in Toronto on  
4         Friday?

5           THE CHAIRMAN: Yes.

6           MR. CASSIDY: Thank you.

7           THE CHAIRMAN: We don't believe there is  
8         anything outstanding other than what we have covered  
9         this morning, unless parties advise us to the contrary.

10          MR. FREIDIN: Just one matter, Mr.  
11         Chairman. I had not been able to determine the date on  
12         which we could provide that clearcut outline. We just  
13         haven't had a chance to get all the people together.  
14         We will try to do that some time today and maybe get  
15         back to the Board before you adjourn today; but if not  
16         today, early next week.

17          THE CHAIRMAN: All right. And then we  
18         will set the notice period for that. We will try and  
19         make it reasonable in the sense that we would like to  
20         cover that evidence by the completion of Panel 17.

21          MR. FREIDIN: Thank you, Mr. Chairman.

22          THE CHAIRMAN: Okay. Ms. Seaborn?

23          MS. MURPHY: If I can just take a minute  
24         to take care of some undertakings and filings.

25           First of all, you had asked a question

1       with respect to the authority to delegate the Minister  
2       of Natural Resources and I had advised you that that  
3       authority was in the Ministry of Natural Resources Act.  
4       I have now obtained a copy of Section 7 of the Ministry  
5       of Natural Resources Act which indicates in subsection  
6       1:

7                 "The Minister may authorize the Deputy  
8                 Minister or any other officer or employee  
9                 in the Ministry to exercise any power or  
10                 perform any duty that is granted to or  
11                 vested in the Minister under this or any  
12                 other Act."

13                 And sub 2 which indicates:

14                 "The Minister may limit an authorization  
15                 made under subsection 1 in such manner as  
16                 he considers advisable."

17                 So that's that section, sir.

18                 Some further information on delegations  
19         of authority. I'm providing some portions from the  
20         federal Fisheries Act, most importantly part of the  
21         regulation in which the conservation officers in the  
22         Ministry of Natural Resources are appointed as officers  
23         under the federal Fisheries Act. So that is portions  
24         of the federal Fisheries Act.

25                 I will just indicate, is that -- excuse

1 me are we at 964?

2 THE CHAIRMAN: Yes. I think we will give  
3 these regulations and the statute, if it's in a  
4 statute, numbers.

5 MS. MURPHY: That's fine. I have three  
6 documents here, I will just tell you what all three of  
7 them are and look after it.

8 THE CHAIRMAN: All right.

9 MS. MURPHY: So that's 964.

10 The next document that I have for you is  
11 a designation by the Minister of Natural Resources,  
12 this is under the authority of subsection 2 of section  
13 1 of the Provincial Offences Act and this section  
14 allows the Minister to designate persons as provincial  
15 officers under the Provincial Offences Act. There is a  
16 list of designations which indicate which persons in  
17 the Ministry of Natural Resources can enforce various  
18 legislation including Lakes and Rivers Improvement Act,  
19 Public Lands Act, et cetera.

20 So that's a designation by the Minister  
21 Lynn McLeod and this one is dated the 3rd of November,  
22 1989, designations under the Provincial Offences Act.

23 THE CHAIRMAN: So the first one will be  
24 Exhibit 964, the second one would be Exhibit 965.

25 MS. MURPHY: Fine.

1                   THE CHAIRMAN: The one you just referred  
2 to will be 966.

3                   MS. MURPHY: Were you intending to mark  
4 the Ministry of Natural Resources Act as --

5                   THE CHAIRMAN: Those sections.

6                   MS. MURPHY: All right. That is fine, we  
7 might as well.

8                   THE CHAIRMAN: Yes.

9                   MS. MURPHY: And then finally I have one  
10 last some document. This is an answer to an  
11 undertaking for OFIA on examples of the efficiencies  
12 possible in the moose guidelines effectiveness  
13 monitoring because of industry cooperation and that is  
14 a list of examples that we made a promise to provide in  
15 an undertaking.

16                  THE CHAIRMAN: All right. That will be  
17 Exhibit 967.

18                  MR. CASSIDY: I hope there is a 33 page  
19 exhibit coming up and we can mark each page as an  
20 exhibit.

21                  THE CHAIRMAN: We trust you are getting  
22 nervous, Mr. Cassidy. We intend to slow down on the  
23 exhibit list.

24                  MR. CASSIDY: That will be your  
25 proverbial error, Mr. Chairman. Of course, Mr.

1 Chairman, if you slow down in time for Mr. Turkstra to  
2 enter exhibit 1000, your bill may be rather high.

3 THE CHAIRMAN: Ms. Murphy, we better  
4 review the numbers on this because we have got  
5 different documents.

6 MS. MURPHY: All right.

7 THE CHAIRMAN: You have got one coming  
8 yet.

9 MS. MURPHY: That's right.

10 THE CHAIRMAN: I think an excerpt of the  
11 Act.

12 MS. MURPHY: 964 will be an excerpt from  
13 the Ministry of Natural Resources Act which I don't  
14 have copies of today, that is 964. 965 are excerpts  
15 from the Fisheries Act. 966 --

16 THE CHAIRMAN: Just a moment, sorry.

17 966...?

18 MS. MURPHY: Is a designation by Lynn  
19 McLeod the Minister of Natural Resources dated November  
20 3rd, 1989.

21 THE CHAIRMAN: And 967 is the response to  
22 the OFAH Interrogatory?

23 MS. MURPHY: OFIA, that's right.

24 THE CHAIRMAN: OFIA, I'm sorry.

25 ---EXHIBIT NO. 964: Excerpt from Ministry of Natural

1

Resources Act.

2

---EXHIBIT NO. 965: Excerpts from the federal  
Fisheries Act.

3

---EXHIBIT NO. 966: Designation by Lynn McLeod,  
Minister of Natural Resources,  
dated November 3, 1989.

5

---EXHIBIT NO. 967: List of examples of efficiencies  
in answer to undertaking by MNR  
to OFIA/OLMA.

7

JOHN EDWARD OSBORN,  
JOHN CARY,  
DAVID GORDON,  
WILLIAM STRAIGHT,  
DAVID EULER,  
JAMES ALEXANDER MacLEAN,  
TOM TWORZYANSKI, Resumed

11

12

THE CHAIRMAN: Ms. Seaborn?

13

MS. SEABORN: Thank you, Mr. Chairman.

14

Good morning, members of the panel.

15

16

17

18

Mr. Chairman, my questions this morning  
are going to be dealing essentially with the local  
monitoring aspects of the evidence as opposed to the  
provincial monitoring program.

19

20

21

22

23

24

25

There has been a fair amount of evidence  
on that and there are some aspects that we would like  
to discuss with MNR with respect to the provincial  
monitoring, but I don't think that those matters are of  
such significance that they need to be presented to the  
Board and, in light of the upcoming negotiation  
process, there are a number of matters that we have

1       decided not to ask questions on today in light of the  
2       filing of draft terms and conditions by all parties.

3                     Q. Members of the Panel, my questions  
4       are going to be mainly for Mr. Straight and Mr. Gordon.  
5       I have a few questions for Mr. Cary and I think maybe I  
6       have one question for Dr. Euler, so he doesn't feel  
7       left out.

8                     And if any of the other members of the  
9       panel disagree with any of the answers given by their  
10      colleagues, I would ask them to jump in and let me  
11      know, which I'm sure you will not hesitate to do.

12                  Mr. Gordon, I want to begin with you and  
13      briefly discuss the concepts of compliance effects and  
14      effectiveness monitoring. The evidence has been that  
15      compliance monitoring is a set of activities designed  
16      to ensure or check compliance with timber management  
17      plans for legislation; is that correct?

18                  MR. GORDON: A. That's correct.

19                  Q. And to put it as Mr. Hanna did last  
20      week, it's fairly straightforward, you check to ensure  
21      what you plan to be done was actually done?

22                  A. Yes, that is what you do.

23                  Q. And one of the elements of your  
24      compliance monitoring program is the area inspection  
25      process; correct?

1                   A. That's correct.

2                   Q. And the second part of monitoring is  
3                   the effects/effectiveness monitoring which was  
4                   described for both timber and non-timber values?

5                   A. That's correct.

6                   Q. And in terms of effects, as I  
7                   understand the evidence, Mr. Gordon, they can be either  
8                   positive effects, negative effects or unknown effects;  
9                   is that fair?

10                  A. I believe so, yes.

11                  Q. And for the three provincial  
12                  guidelines, the ESSA study was developed to look at the  
13                  effects of the three provincial guidelines?

14                  A. Yes.

15                  Q. And would you agree that to the  
16                  extent that effects are known, a judgment has to be  
17                  made as to whether the effect is positive or neutral  
18                  and, therefore, acceptable or whether that effect is  
19                  negative and, therefore, unacceptable?

20                  A. That's correct.

21                  Q. And if the effect is unacceptable --

22                  THE CHAIRMAN: Well, Mr. Gordon, are you  
23                  indicating that an effect which is negative can  
24                  nevertheless be adopted; in other words, are all  
25                  negative effects automatically excluded, the activity

1       causing those effects excluded?

2                    MR. GORDON: If that is what my answer  
3       meant, definitely not. You may accept some negative  
4       effects, you may have to make some tradeoff decisions.

5                    THE CHAIRMAN: Right.

6                    MS. SEABORN: That is fine, Mr. Chairman.  
7       I think I was looking at it in terms of the  
8       terminology. I wanted to be clear that when you look  
9       at effects you can say they are positive, the effect is  
10      neutral, or it's negative.

11                  Q. Now, if you have a negative effect -  
12      and, Mr. Gordon, I think you would agree with me - and  
13      that is unacceptable, whether or not you decide at the  
14      end of the day to live with that unacceptable effect is  
15      a different question?

16                  MR. GORDON: A. I can agree with that.

17                  Q. Right. And that is a different  
18      question than the judgment in the first instance as to  
19      whether or not an effect was negative or positive?

20                  A. That's correct.

21                  Q. Okay. And if an effect is  
22      unacceptable you may have to change your guideline or  
23      you may have to change your compliance requirement; is  
24      that a fair statement?

25                  A. Not necessarily, or you may accept

1           the negative effect.

2           Q. Okay, or you may accept it. But two  
3           of the options you have at least is to go back and  
4           change your compliance requirement or to change your  
5           guideline if an effect is unacceptable?

6           A. And you are not willing to accept it.

7           Q. Yes.

8           A. That's correct.

9           Q. Okay. And, Mr. Gordon, would you  
10          also agree that monitoring involves an assessment of  
11          the elements of compliance effects and effectiveness  
12          working together?

13          A. Not necessarily.

14          Q. Okay.

15          A. Although that can happen.

16          Q. The context that I'm thinking of it  
17          in is that Dr. Osborn at the outset of the evidence  
18          gave an example of describing how you look at  
19          compliance effects and effectiveness and then you have  
20          your management loop and you have feedback into  
21          compliance. Would you agree with that?

22          A. I'm not following you. Feedback into  
23          compliance?

24          Q. That's right. If you have a negative  
25          effect and you determine that you weren't effective,

1       one of the ways of dealing with that would be to  
2       feedback into your management look back to compliance  
3       and perhaps the way to deal with that effect is to  
4       change your compliance requirement.

5                   A. I probably -- I think maybe what Dr.  
6       Osborn said, and perhaps what you mean, is in those  
7       instances where you do have an option and you are not  
8       willing to accept the negative effect, what you may do  
9       is change your plan for the next five-year period to  
10      try and negate that negative effect, and then you would  
11      monitor compliance against those new objectives.

12                  Q. And if you are changing your plan,  
13       then essentially you would be changing your compliance  
14       requirement; isn't that so?

15                  A. Yes.

16                  Q. Now, in terms of local monitoring,  
17       Mr. Straight, your evidence has been that one of the  
18       reasons for MNR staff being in the field is to check  
19       for compliance with prescriptions on all areas of  
20       operations; correct?

21                  MR. STRAIGHT: A. All areas of operation  
22       in general which was the evidence of Mr. Cary in areas  
23       of concern in specific which would be dealing with  
24       protecting the non-timber values, if you will.

25                  Q. And if you could turn to page 432 of

1       the Panel 16 witness statement.

2                  A. Yes, I have it.

3                  Q. And the second paragraph starting in  
4       the fourth line states that:

5                          "In the course of inspections, staff may  
6                                  observe indications of adverse effects.  
7                          These would usually be readily observable  
8                                  undesirable situations such as stream  
9                                  siltation or water ponding."

10                  Now, Mr. Straight, is it fair to say that  
11       when area inspections for compliance are conducted  
12       staff can and do make observations regarding the  
13       effects of a prescription?

14                  A. They do. As I indicated in evidence  
15       in chief -- in lead basically that they do have an  
16       opportunity to assess certain types of potential  
17       effects or observations on certain types of potential  
18       effects. And I think in lead we tried to give some  
19       indication relative to the aquatic, terrestrial and  
20       socio-economic environment of the types of observations  
21       we could expect staff to make.

22                  Q. And I guess my point is that when  
23       your staff is out in the field checking for compliance,  
24       there are going to be some effects that they can  
25       observe.

1                   A. Well, what they may observe is  
2 undesirable situations. As to whether or not that is  
3 an effect of timber management, that may well require  
4 additional investigation to be able to obtain, but in  
5 effect what they -- in actual fact what they are doing  
6 is making observations during area inspections of  
7 potential effects.

8                   Q. Okay. And on page 432 you give an  
9 example of where there has been compliance with a  
10 prescription but an unacceptable effect.

11                  MS. MURPHY: 432?

12                  MS. SEABORN Yes.

13                  MR. STRAIGHT: I describe a situation I  
14 believe rather than a specific example. Is that what  
15 you are suggesting?

16                  MS. SEABORN: Q. That's right.

17                  MR. STRAIGHT: A. Okay.

18                  Q. You describe a scenario where that  
19 may very well be the case, the person in the field goes  
20 out and finds that there has been compliance with a  
21 prescription but there has been an undesirable effect  
22 or observation noted.

23                  A. That's correct.

24                  Q. And in reading your paper, Mr.  
25 Straight, in the witness statement, would you agree

1       with me that on a local level the area inspection  
2       process can do more than merely register compliance, it  
3       also includes a form of local effects/effectiveness  
4       monitoring?

5                     A. You have to be very, very careful  
6       with what you do with those observations and I think we  
7       have tried to very clearly demonstrate that.

8                     The assessment of effects of timber  
9       management really in total, in a very comprehensive  
10      way, can be a very complex situation, and Dr. MacLean  
11      in his lead evidence tried to give some indication of  
12      the complexity and the type of skills and the type of  
13      studies and the costs that you need to make those kinds  
14      of effects. And that specifically is the reason we  
15      have gone to the design of the provincial monitoring  
16      program for effects and effectiveness the way we have.

17                  Recognizing those limitations, we also  
18      want to take advantage of the opportunities in the  
19      field for staff to make observations and you really  
20      have to be careful as to what you can do with those  
21      observations they make. And when you -- and you build  
22      unnecessary or potentially unfulfilled expectations  
23      when you give it the context, a general context of  
24      being an effects and effectiveness monitoring program  
25      at the local level because of the limitations.

1                   So if you can accept those constraints if  
2 you will, or those bounds, what we really hope to do  
3 and we have tried to be very explicit in what our staff  
4 are capable of doing and what we can do at the local  
5 level in terms of saying observations about effects and  
6 effectiveness.

7                   Q. I understand all that, Mr. Straight,  
8 and I guess my point is quite simple: If you put aside  
9 the provincial monitoring program for a moment that we  
10 are dealing with the provincial guidelines, and you put  
11 aside any long-term studies and long-term research,  
12 what I want to focus in on is the local monitoring  
13 aspect, the MNR staff that is out in the field.

14                  And I think you would agree with me the  
15 evidence throughout the hearing has been that MNR  
16 relies heavily on its field staff in terms of the work  
17 that they do out there, and in fact I think your  
18 evidence has been that you want your staff to be out in  
19 the field rather than in the office filling out  
20 reports; is that fair?

21                  A. Yes, that is fair.

22                  Q. And I was happy to see when I read  
23 your paper starting at 432 that one of the advantages  
24 of the new area inspection process is that it is  
25 designed on a local level to assist you in determining

1 situations where there may be compliance but a negative  
2 effect, or there may be non-compliance and the effect  
3 was neutral or in fact positive.

4 And I had understood in looking at the  
5 evidence that one of the advantages of this new area  
6 inspection process was that staff in the field would be  
7 able to make these observations; is that fair?

8 A. That's right. They can make those  
9 observations to the degree that can reasonably be  
10 expected.

11 Q. Okay. And I fully accept and I think  
12 you would agree with me that a field person could not  
13 go out and look at a stream and make a note as to  
14 whether or not there is an increase or decrease in pH?

15 A. Yes, that's right.

16 Q. And that's not the intent of someone  
17 making a notation on an area inspection form of  
18 observable effects?

19 A. Yes, that's correct.

20 Q. Okay. And so my point is that in  
21 terms of local monitoring, and I thought we may  
22 actually even be in agreement on this if you look at  
23 page 433 of your evidence at the top, you are talking  
24 about the area inspection process and you go on to say,  
25 in the second sentence:

1                   "The review of these and similar  
2                   observations helps local managers to  
3                   assess the effectiveness of prescriptions  
4                   as they are applied in the local  
5                   context and to respond with modifications  
6                   in future when required. In this sense  
7                   this consistent reporting and review  
8                   constitutes a local effectiveness  
9                   monitoring program."

10                  Do you see that?

11                  A. Yes, I see that.

12                  Q. Okay. And my point is that when we  
13                  are looking at the area inspection process, is it not  
14                  true that in a local sense it involves more than just  
15                  compliance, there is an element of effects and  
16                  effectiveness monitoring bound up in the area  
17                  inspection process?

18                  A. We have tried to provide those  
19                  opportunities for observations of effects and  
20                  effectiveness in the area inspection process, yes.

21                  Q. Okay. Now, Mr. Cary, your evidence  
22                  was that the area inspection reports for AOCs will be  
23                  are summarized in Table 4.12.X?

24                  MR. CARY: A. That's right, the area  
25                  inspection reports on the individual AOC will form the

1 basis for completing 4.12.X in terms of compliance, yes  
2 or no, and what happened.

3 Q. Okay. We are going to look at an  
4 example in a minute. And I take it the Timber  
5 Management Planning Manual will be amended to include  
6 Table 4.12.X?

7 A. Yes, that will be the case.

8 Q. And is it your intention to have the  
9 area inspection report form included as well in the  
10 Timber Management Planning Manual along with the table?

11 A. I don't think that is the current  
12 intention. The report form is currently under  
13 development.

14 Q. I'm talking about, assuming there  
15 is -- once the product is finished. I understand that  
16 it's still being developed.

17 A. I don't think it's our intention to  
18 include it as part of the TMPM.

19 Q. Would you have difficulty in  
20 including that as part of the Timber Management  
21 Planning Manual?

22 A. No, I don't think so.

23 Q. Mr. Straight, could you turn to page  
24 36 of the witness statement. I just want to look at  
25 one of the examples on your Table 4.12.X Now, under

1 area of concern No. 3 White Lake, do you see that?

2 MR. STRAIGHT: A. Yes, I do.

3 Q. Now, this summary indicates that  
4 while there was non-compliance with the prescription  
5 there was no unacceptable effect; that is, the rookery  
6 was not disturbed; is that correct?

7 A. Yes, it says:

8 "Trespass into 60-metre reserve..."

9 Q. Right. So there was non-compliance  
10 with the prescription?

11 A. In that case there would have been  
12 non-compliance.

13 Q. And the notation that appears below  
14 is that regardless of the non-compliance there wasn't a  
15 problem with the disturbance of the rookery which was  
16 one of the values you were intending to protect in the  
17 first instance?

18 A. That's correct, there was no apparent  
19 disturbance of the rookery.

20 Q. And I think you would agree with me  
21 from your earlier evidence that that's useful  
22 information about a local effect to have on record?

23 A. Now and in this particular instance,  
24 Ms. Seaborn, this would be as a result of  
25 non-compliance, okay.

1                   Q. I understand that.

2                   A. Okay. So this is something that, in  
3 other words, if it had been anticipated -- if it had  
4 been achieved as we would have expected, it would -- we  
5 would have expected it to be effective. But, yes,  
6 okay, this is useful information.

7                   Q. Okay.

8                   Q. Now, suppose on area of concern No. 1  
9 on the second page under compliance assessment there's  
10 a yes, if the person in the field doing the area  
11 inspection report had observed some sort of effect,  
12 would that have been noted on the area inspection  
13 report?

14                  A. If that person had -- if when the  
15 person did the area inspection they noticed, made an  
16 observation for example on erosion of the shore?

17                  Q. Sure, for example.

18                  A. They would have noted that.

19                  Q. And would that show up on Table  
20 4.12.X beside yes, and then underneath there would be  
21 compliance but then there would be a notation saying  
22 they had viewed some erosio?

23                  A. That may or may not show up in Table  
24 4.12.X, in fact it would not. 4.12..X is a table that  
25 demonstrates compliance or, in instances of

1 non-compliance, action that was taken.

2                   What we would do in instances of  
3 repeatedly seeing instances of erosion, for example, as  
4 an observation that staff could make, would be to deal  
5 with that as a problem in the report of past operation.  
6 In instances where compliance was achieved, but  
7 prescription -- but obviously we see evidence on doing  
8 area inspections and potentially subsequent  
9 investigations that we're not reaching the level of  
10 prevention of erosion that we would like to see, and we  
11 would deal with that as a separate issue in the timber  
12 management planning process.

13                  Q. I understand that that is how you  
14 intend to deal with these things, and I guess my  
15 problem is, in looking at this table is that where you  
16 have non-compliance and field staff observe something  
17 on the area inspection form, that appears to show up in  
18 Table 4.12.X?

19                  A. That's correct.

20                  Q. But in the event that you have  
21 compliance and the field person still observes a local  
22 effect, I think what you are telling me is that that  
23 would not necessarily show up on Table 4.12 .X?

24                  A. No it would not, not specifically.

25                  Q. And my question to you is that: You

1       are spending money, a considerable amount of money on  
2       the area inspection process, you are having field staff  
3       out there collecting for compliance, if they make a  
4       notation if you will for effects on the area inspection  
5       form and if such a notation can make it into 4.12.X for  
6       non-compliance, would it be that difficult to include  
7       an assessment of effects and effectiveness as well  
8       where there was compliance? Wouldn't that be useful  
9       information?

10                  A. Well, the trouble is you are not just  
11       making an assessment of effects and effectiveness, this  
12       is what -- when you put down that title of that  
13       heading, you are actually providing a misleading  
14       heading and I think Mr. Gordon tried to deal with that  
15       earlier.

16                  Q. Yes.

17                  A. Okay. So, first of all, calling it  
18       effects and effectiveness monitoring in the scientific  
19       sense that we have tried to deal with it here is very  
20       misleading.

21                  Q. Okay. I don't care what we call it.

22                  A. But that is a problem because it does  
23       build up unnecessary expectations.

24                  Q. I understand that the terminology  
25       causes a level of discomfort for you.

1                   A. Okay.

2                   Q. And I accept that, but just let me  
3 finish. I think my simple point is that by your own  
4 evidence in terms of local monitoring we do have people  
5 out there in the field?

6                   A. Yes.

7                   Q. Making notations of effects.

8                   A. Yes.

9                   Q. And to me it would seem quite  
10 practical, no matter what you call this last column, to  
11 roll up compliance effects and effectiveness for local  
12 monitoring together.

13                  It doesn't matter to me what you call it,  
14 but you have got the people doing it there, you  
15 summarize the area inspection reports for areas of  
16 concern, and I think it would be useful information for  
17 someone reviewing a timber management plan to have that  
18 in a table format rather than a paragraph in the report  
19 on past forest operations.

20                  A. Okay. And we agree that the  
21 information can be useful, and the way in which we have  
22 suggested that it might be appropriate to deal with it  
23 has been to record those observations on area  
24 inspection forms. We may record -- and record the  
25 results of further investigations as well relative to a

1 specific area of concern.

2 It may well be that you have engineering  
3 staff go out and make a separate report, you may have  
4 fisheries staff go out and make a separate  
5 investigation and report, you may get a number of  
6 different specialists to look at a specific situation.

7 Those records would be part of the file  
8 that is maintained in the area of concern planning  
9 process. In instances of non-compliance, those records  
10 and the results of that are reported in Table 4.12.X as  
11 you alluded to.

12 What we have said is, is the way to  
13 appropriately deal with those other situations where  
14 compliance is achieved and yet we are noticing  
15 undesirable situations is, is that we will deal with  
16 those undesirable situations if they reach a stage  
17 where they become significant, if you will, in the  
18 timber management planning process as a result of  
19 planning for them, considering them in the report of  
20 past operations and dealing with them in the problems  
21 and issues section of the new timber management plan.

22 Those observations are recorded and are  
23 on file at the district. It may well be that the  
24 problem in trying to capture them in this table is, is  
25 that the range of them can tend to be very variable,

1       the types of observations that people may make. It may  
2       be situations of unexpected access in a remote  
3       situation which you may feel that you have to -- in a  
4       situation where you have tried to protect for  
5       remoteness.

6               It may range to the heron rookery  
7       instance here where staff report indeed that the herons  
8       are still present, or if the herons are absent, and  
9       then you can draw very limited conclusions from the  
10      presentation or absence of a particular species as a  
11      result of one observation on an area inspection form.

12               To report that kind of information and  
13      summarize it is of very limited value, and that is one  
14      of the -- so we are suggesting that we should use some  
15      reason in terms of reporting and dealing with those  
16      situations which are problems.

17               MRS. KOVEN: Mr. Straight?

18               MR. STRAIGHT: Yes.

19               MRS. KOVEN: You are not talking about  
20      situations that are problems that can be fixed fairly  
21      quickly. I mean, if you have a broken bridge or you  
22      can do something to fix a problem, surely you wouldn't  
23      wait five years to put it in a report of past  
24      operations?

25               MR. STRAIGHT: Well, that's correct. And

1 if I recall the example that I used in lead dealing  
2 with that, it was a situation which as well that Mr.  
3 Pyzer has alluded to where he had made repeated  
4 attempts to render a road impassable to protect the  
5 remoteness of a particular situation and he continued  
6 to alter his strategy or to take efforts to render that  
7 impassable.

8                   And either looking at that specific case,  
9 or you may find in a number of similar cases where you  
10 tried certain techniques to render a road inaccessible  
11 to prevent a remote tourism operation, that you were  
12 being unsuccessful. What you would do at the local  
13 level -- what you would do is report that as a problem  
14 that needed -- that had to be dealt with in the timber  
15 management planning process, and you would likely  
16 revise your strategy in those particular instances to  
17 deal with the protection of that particular value and  
18 you would deal with that and report that in that case  
19 in the timber management planning process.

20                   In the case of a heron rookery, you may  
21 have put a prescription into place, it may -- the  
22 prescription may have been complied with. When your  
23 staff went there they may have noticed that there were  
24 a fewer number of great blue herons there than the  
25 person who made the inspection earlier. That one

1 observation is of very, very limited value.

2                   The district may decide that it's not  
3 worth following up on, and so you now have -- you now  
4 have an observation: Do we need to report all of those  
5 kinds of observations and this is why we are saying we  
6 have to be reasonable in terms of the usefulness of the  
7 information and what do you do with it.

8                   MRS. KOVEN: What do you see more  
9 frequently in those situations, do you see situations  
10 that are amenable to some sort of kind of solution or  
11 do you see those as difficult to interpret  
12 observations?

13                  MR. STRAIGHT: In every case in general  
14 you are going to have to follow up those situations  
15 with some kind of additional assessment, first of all.  
16 I think in my own personal experience the kind of  
17 observations where you are most likely to be able to do  
18 something with to deal with those observations relative  
19 to remoteness or where staff can actually see evidence  
20 of use, you can see where there has been a trail  
21 constructed to the shore of a lake, you can see fresh  
22 tracks from quads or four-runners, that sort of thing.

23                  And if your intent was to retain  
24 remoteness, then that would -- and you made those kinds  
25 of observations, that would trigger additional

1       investigations and follow up. You can readily see it  
2       in a lot of cases particularly at the site of water  
3       crossings, evidence of sedimentation and erosion.

4                  To be actually perfectly honest, those  
5       are probably the two most common situations where those  
6       observations can be of most use and benefit. For many  
7       and most other effects the observations you make are  
8       really of limited value.

9                  If you were intending to protect an  
10      eagle's nest and on an area inspection you didn't  
11      know -- you noticed the eagle wasn't there, it could be  
12      anywhere, you know, it's of limited value by itself and  
13      without a lot of intensive follow up and investigation  
14      after that, which is not practical in all instances,  
15      it's difficult to suggest how far we would take those  
16      specific observations that staff make.

17                  MS. SEABORN: Q. Can you turn for a  
18      moment, Mr. Straight, to Exhibit 946 which is the  
19      bundle of Ministry of the Environment interrogatories  
20      for this panel.

21                  A. Do you have the specific number. I  
22      have one here as well.

23                  Q. Yes, No. 1, Question 1 on the third  
24      page, and you will see the title underlined Non-Timber  
25      Values.

1                   A. Yes, I have it.

2                   MS. SEABORN: Now, the second paragraph  
3                   there is an interrogatory, Mr. Chairman, posed by MOE  
4                   with respect to compliance effect and effectiveness  
5                   monitoring.

6                   Q. The second paragraph under point A  
7                   says that:

8                   "While the requirement to conduct area  
9                   inspections is primarily directed at  
10                  assessment of compliance with conditions  
11                  of plan approval, the inspector is  
12                  expected to know notify of unexpected  
13                  observable effects of the activity."

14                  And then the last sentence states:

15                  "This provides a medium although limited  
16                  information on the effects and  
17                  effectiveness at the local site-specific  
18                  level."

19                  Okay. Now, I think I said at the outset  
20                  that I accept that, I don't expect field staff to be  
21                  doing a level of monitoring in any way, shape or form  
22                  that Dr. MacLean explained or anything that is  
23                  equivalent to the provincial monitoring program.

24                  And maybe we will just do it this way, go  
25                  to another example. If you turn to page 37 of the

1        witness statement under No. 5 -- AOC No. 5 Blue River.

2                    MR. STRAIGHT: A. Blue River. Yes, I  
3        have it.

4                    Q. Now, under compliance assessment the  
5        notation says no and that means non-compliance?

6                    A. Yes.

7                    Q. And then there was cut to shore where  
8        a 15-metre reserve is left and the effect that was  
9        observed was siltation of a spawning bed.

10                  Now, is it your position then that had  
11        this no been a yes, had there been compliance but the  
12       person in the staff -- the person in the field had  
13       still observed siltation of a spawning bed, that that  
14       local observation would not show up on 4.12.X?

15                  A. That specific situation would not  
16        have shown up in that specific table had there been  
17       compliance, okay.

18                  Q. And the reason why I am suggesting  
19        this is that the people are in the field anyway, so it  
20       would be no more work for them to include that in  
21       4.12.X.

22                  THE CHAIRMAN: Well, Ms. Seaborn, without  
23        going around it again--

24                  MS. SEABORN: Okay.

25                  THE CHAIRMAN: --I think the Ministry's

1 position based on what they have said is that  
2 information is there in the report, it is not in the  
3 table, and one of the reasons that they don't want to  
4 put it in the table is that a particular observation  
5 may be of such limited value that it has to be followed  
6 up with investigations in order for it to be  
7 meaningful, and that the purpose of the table is  
8 essentially to indicate whether there is compliance or  
9 non-compliance with a prescription.

10 That is not to say that information isn't  
11 available, it's just not in the table, as I understood  
12 the evidence, it's in the area inspection reports, all  
13 of the observations--

14 MR. STRAIGHT: That's correct.

15 THE CHAIRMAN: --which are available to  
16 be reviewed, and the reason that you don't want to put  
17 it in the table is essentially, in many cases, you  
18 haven't reached any final conclusions or you haven't  
19 done enough investigations to make the single  
20 observation meaningful enough to find it's way into a  
21 summary report. And if it is in the summary report, I  
22 believe it's your evidence that it may be in fact  
23 misleading.

24 MR. STRAIGHT: That is potentially true,  
25 yes.

1                   THE CHAIRMAN: So I think the Ministry  
2 has been advised of why you think it should be in  
3 there, and they have given a reason why they feel it  
4 shouldn't be in there, and I don't know where we go  
5 from here, other than the fact that I don't think you  
6 have got an agreement ut of them that it should be in  
7 the report.

8                   MS. SEABORN: And, Mr. Chairman, our  
9 point is that people want to follow through in our  
10 estimation on areas of concern that they identify,  
11 following right through to compliance effects and  
12 effectiveness shows you the whole package.

13                  This table, which we think is great, the  
14 whole area inspection process, they outline in their  
15 terms and conditions they are asking for a lot of money  
16 to carry this out and we think that just registering  
17 that what you did out there was actually done is not  
18 necessarily that useful to the public who wants to know  
19 whether the MNR staff are observing anything else.

20                  Now, I won't go any further on this  
21 because I take your point, but just if I can put it in  
22 the context of why we are interested in this very clear  
23 table, it's going to appear in the report of past  
24 forest operations, people who review timber management  
25 plans on an ongoing basis will be able to look at these

1       tables for the past five-year plan and, in our  
2       estimation, it would be useful information because we  
3       think what MNR staff do out there in the field is  
4       useful information.

5                     THE CHAIRMAN: Well, Panel, is this Table  
6       4.12.X going to be completed after each and every area  
7       inspection? I know there is an area inspection report  
8       that comes out, but is the summary table going to be  
9       completed after each and every one?

10                  MR. CARY: No, the summary report is  
11       completed once and we use the area inspection report to  
12       complete the table and it's only done once.

13                  THE CHAIRMAN: Well, Ms. Seaborn, that  
14       would be a suggestion as to why it might not be  
15       appropriate, because there may be subsequent area  
16       inspections which completely obviate the first  
17       observation, and so if you have it in a report and all  
18       the person sees from reviewing sees is: Oh, there was  
19       an observation, there wasn't an eagle in the nest,  
20       noticed no eagles, but the very next one might reverse  
21       that.

22                  MS. SEABORN: But, Mr. Chairman, that is  
23       my point. Someone then -- a member of the public would  
24       have to go into the district office and look at every  
25       single area inspection report to see how many were

1           done.

2                         Presumably when Mr. Cary or whoever is  
3                         summarizing the area inspection reports for the  
4                         purposes of 4.12.X, because they are a summary, they  
5                         can lump things together. If they want to discard one  
6                         of the area inspection reports because it has become  
7                         redundant they can do that in the summary and that way  
8                         the public and MOE staff and anyone else who is  
9                         interested can look at the summary not at the reports.

10                  That is the point and that is why we are  
11                         interested in this.

12                  THE CHAIRMAN: Well, I can understand  
13                         your concern, but that would probably require a great  
14                         deal of work for Ministry staff at the end of the day  
15                         to have to review in each and every one of the reports  
16                         for the comments. It's easier to review the reports  
17                         with respect to compliance or non-compliance.

18                  MR. GORDON: Mr. Chairman, if I could say  
19                         something, maybe a summary of MNR's position. The  
20                         intent of Table 4.12. X is to show whether or not there  
21                         was compliance with the area of concern prescription.  
22                         Where there is non-compliance, we will be providing  
23                         more detail as we have shown in the example.

24                  We recognize MOE's concern here that we  
25                         do have more information available and the public

1       should be aware of that. Where we note through our  
2       regular area inspections, whether we are dealing with  
3       areas of concern, whether we are dealing with  
4       non-compliance or compliance, and we pick up frequently  
5       a problem and we consider it significant and the  
6       professionals within district who are being paid to do  
7       that consider it significant, we will summarize that in  
8       the report of past forest operations in a number of  
9       paragraphs.

10                   And I would suggest to you that that is a  
11       better use to the public.

12                   THE CHAIRMAN: Okay. Well, we have the  
13       two positions. I don't know if we can go much further  
14       on it at this point.

15                   MS. SEABORN: Q. Just one more quick  
16       question on this. Mr. Straight, looking again at page  
17       37 on the AOC No. 5.

18                   MR. STRAIGHT: A. Yes.

19                   Q. If there had have been compliance but  
20       siltation of a spawning bed had been observed, would  
21       charges have still been laid under the Fisheries Act?

22                   A. First of all, I think we want to  
23       recognize that this is a hypothetical here in that  
24       case.

25                   Q. That is fine.

1                   A. My good sense is if there was  
2 compliance, there would not have been charges.

3                   Q. Okay.

4                   THE CHAIRMAN: Why is that so in the  
5 sense that, as I recall the Fisheries Act, it is an  
6 offence to allow a deleterious substance, et cetera,  
7 enter into a waterbody, period; there is no mens rea,  
8 there is no guilty mind provision in there, it's  
9 basically a prohibition against something happening.  
10 If it happens you can be susceptible to a charge.

11                  MS. STRAIGHT: There is also a provision  
12 in there which - and I am not going to degrade it, the  
13 legal terminology - but there is also a provision in  
14 the Fisheries Act which exonerates, if you will, an  
15 individual or a proponent from being charged under the  
16 Act if what they do is done with the approval of the  
17 Minister.

18                  And, in this particular case, if it was  
19 compliance, the individual would have been doing what  
20 they were asked to do, and both in terms of the Act and  
21 probably also from just reasonable common sense, if  
22 people do what the Ministry asks them to do, it doesn't  
23 seem reasonable to charge.

24                  THE CHAIRMAN: Maybe they should charge  
25 the Ministry instead?

1                   MR. STRAIGHT: Well, let's not get into  
2 that, Mr. Chairman.

3                   THE CHAIRMAN: All right, thank you.

4                   MS. MURPHY: Mr. Straight is referring to  
5 Section 35, sub (1) and (2) just for your information  
6 on the Fisheries Act.

7                   THE CHAIRMAN: Thank you.

8                   MS. SEABORN: Q. Mr. Gordon, area  
9 inspections are mandatory for all activities and not  
10 just areas of concern; correct?

11                  MR. GORDON: A. That's correct.

12                  Q. And in normal operating areas then  
13 you have MNR staff out checking to make sure that the  
14 activity that was proposed on a site was in fact  
15 carried out and this would again be noted in an area  
16 inspection report?

17                  A. Yes.

18                  Q. And as is the case for areas of  
19 concern, field staff are also supposed to make  
20 notations on the area inspection form as to any  
21 observable effects?

22                  A. Yes, right. If you recall in my  
23 lead, for example, given a harvesting operation was  
24 taking place, one of the things that we are concerned  
25 about is the maintenance of site integrity and we don't

1 consider it a large problem.

2                   But if you observe, for example, rutting  
3 or excessive bulldozing or local ponding, then we would  
4 expect our staff to note that on the area inspection  
5 report.

6                   Q. And in the sense that I discussed  
7 with Mr. Straight, would you agree with me then that  
8 for normal operating areas there is also an element of  
9 local effects monitoring for timber values?

10                  A. When you are carrying out area  
11 inspections?

12                  Q. That's right.

13                  A. Yes. I guess the way I look at it is  
14 very simple. The purpose of the area inspection is to  
15 monitor compliance and if we pick up some of these  
16 observations it's a bonus, and that's simply how I look  
17 at it.

18                  Q. And I would just like to have a look  
19 again at MOE Interrogatory No. 1 which is found in  
20 Exhibit 926. And if you could turn to the fourth page  
21 of the answer, which is the fifth page of the exhibit,  
22 the second full paragraph starts with:

23                    "As was noted above..."

24                  A. I think I have got it.

25                    "As was noted above, area inspections for

1                   all activities are mandatory."

2                   Q. That's right.

3                   A. Okay, I've got it.

4                   Q. And then it goes on and says:

5                   "Again, while the requirement to conduct  
6                   area inspections is primarily directed at  
7                   assessment of compliance with conditions  
8                   of plan approval, it is intended that the  
9                   area inspection will also record any  
10                  observable, unanticipated effects of the  
11                  harvest activity on the forest estate  
12                  as well as the effectiveness of the  
13                  harvest."

14                  A. That's correct.

15                  Q. And in that sense, would you agree  
16                  with me that you do have this element of local  
17                  effects/effectiveness monitoring to do with timber  
18                  values?

19                  A. Could you say that again, please?

20                  Q. In light of the statement in your  
21                  evidence, and I think you said a moment ago that you  
22                  see observable effects as being a bonus when someone is  
23                  out checking for compliance, the extent to which  
24                  effects on timber values can be observed, that is in a  
25                  sense a local monitoring function?

1                   A. What I would say is where we note an  
2                   effect on the timber estate of the timber management  
3                   activities and we did not anticipate it and obviously  
4                   it is observable, then we would ask our area inspectors  
5                   to make note of that.

6                   Q. And they are supposed to include that  
7                   in their report; correct?

8                   A. Yes.

9                   Q. Okay. And at the stand level you  
10                  described in your evidence that you also have  
11                  silvicultural effectiveness and regeneration  
12                  effectiveness monitoring and that policy was appended  
13                  as a reference to your paper; is that correct?

14                  I'm referring to Document 3, the paper  
15                  authored by yourself and Dr. Osborn, and at page 576.

16                  A. Yes, 576 relates to the type of  
17                  survey that Mr. Cary termed as being a technical  
18                  survey.

19                  Q. That's right. And as I understood  
20                  Dr. Osborn's explanation, he talked about reporting at  
21                  the management unit level, provincial -- or stand  
22                  level, management unit level, provincial level?

23                  A. Maybe I can be helpful here. I think  
24                  it was my evidence that we will include in the report  
25                  of past forest operations an assessment of

1       silvicultural effectiveness and, therefore,  
2       regeneration effectiveness.

3                   Q. Right.

4                   A. So at the management unit level,  
5       obviously the way you do that is by summarizing the  
6       information you picked up at the stand level.

7                   Q. Right.

8                   A. But we will be providing an overview  
9       for the management unit every five years in the report  
10      of past forest operations.

11                  Q. And as I had understood your  
12       monitoring then for the stand level, is that you have  
13       your area inspection reports and then you have  
14       silvicultural effectiveness and regeneration  
15       effectiveness monitoring? I think those were the three  
16       primary ones that were discussed.

17                  A. Yes. I, in my talk, was relying more  
18       on the technical surveys, although I recognize, for  
19       example, when you have the harvest activity taking  
20       place you may pick some things up relevant to  
21       effects/effectiveness.

22                  Q. That's fine. If we could just look  
23       for a moment at Exhibit 911, Mr. Gordon, which was a  
24       binder that Mr. Campbell filed during Panel 15.

25                  THE CHAIRMAN: What is 911?

1 MS. SEABORN: Big green binder, Mr.  
2 Chairman. (indicating)

3 THE CHAIRMAN: Right.

4 MR. GORDON: It is the MOE planning  
5 manual.

6 MS. SEABORN: Is that approval, Mr.  
7 Gordon?

8 MR. GORDON: I guess I have to be --  
9 definitely not.

10 MS. SEABORN: Because if it is, I will  
11 stop right now.

12 Q. Could you turn to page 10 for a  
13 moment, please. That's under Part 1, page 10.

14 MR. GORDON: A. Yes, I am looking at  
15 silvicultural ground rules for normal operations for  
16 Red Lake Crown.

17 Q. Yes. I think we have seen this  
18 excerpt or a similar one numerous times in previous  
19 panels and this is, as has been explained earlier, an  
20 example of silvicultural ground rules.

21 A. This is an example, yes.

22 Q. Okay. For normal operating areas?

23 A. Yes.

24 Q. And because we are at the five-year  
25 term, we are dealing with options; correct? We don't

1 know yet exactly what silvicultural package is going to  
2 be applied to what piece of land?

3 A. Yes.

4 Q. Okay. Now, once you reach the  
5 monitoring phase of your program, you obviously know  
6 which silvicultural packages or ground rules were  
7 applied to which stands on the management unit; is that  
8 fair?

9 A. In a general sense, yes.

10 Q. Well, say, if someone is going to do  
11 an area inspection report to check for compliance, they  
12 know what the prescription was, they are checking to  
13 make sure that the prescription was in accordance with  
14 the plan?

15 A. In a general sense, yes.

16 Q. I am not sure if the 'general sense'  
17 has any meaning, but I won't worry about it. And  
18 according to the policy that was appended with your  
19 evidence, you often do the assessment of silvicultural  
20 and regeneration effectiveness at the same time?

21 A. When you are going in to monitor  
22 compliance with the management plan?

23 Q. When you are going in to do  
24 monitoring after a silvicultural package has been  
25 applied, it may make more sense for you to assess your

1       silvicultural and regeneration effectiveness at the  
2       same time, as I understood the policy?

3                 A. If you were going in to do the  
4       compliance monitoring right after the work had been  
5       done, it usually would not make sense to be carrying  
6       out a bona fide assessment of the silvicultural  
7       effectiveness at that time. Usually it is too early to  
8       do that right after the treatment. So very often you  
9       will be doing that a few years later in a technical  
10      inspection.

11               Q. But I wasn't necessarily suggesting  
12       that you are always going to be checking for compliance  
13       under your area inspection report at the same time as  
14       you are doing your technical surveys.

15               All I was suggesting, first of all, is  
16       that according to the policy, often the assessment of  
17       silvicultural and regerneration effectiveness is done  
18       at the same time. You do that in the same visit.

19               A. At the same time as when you go to  
20       check compliance?

21               Q. No.

22               A. I'm not getting the nub of your  
23       question. Maybe refer me to the policy, please.

24               Q. I'm sorry, I think I am misleading  
25       you. I am leaving out an element in terms of the free

1 to grow assessment, that is what I should have been  
2 including in; right, you do it with the free to grow?

3 A. Yes. If the purpose of us going out  
4 in the field is to make an assessment of whether or not  
5 we have effective regeneration or not--

6 Q. Right.

7 A. --that's called a free to grow  
8 survey.

9 Q. Right.

10 A. And that could be done 10, 12 years  
11 after a specific activity takes place.

12 Q. That's right. So these things  
13 happen, there is a continuum, they happen over time?

14 A. That's correct.

15 Q. Okay.

16 THE CHAIRMAN: Ms. Seaborn, could we find  
17 a place to take the morning break?

18 MS. SEABORN: We can do it right now, if  
19 you like, Mr. Chairman.

20 THE CHAIRMAN: All right. We will break  
21 for 20 minutes.

22 ---Recess taken at 10:00 a.m.

23 ---On resuming at 10:35 p.m.

24 THE CHAIRMAN: Thank you. Be seated,  
25 please.

1                   Whoever is the mysterious benefactor, the  
2                   Board is thankful.

3                   MS. MURPHY: Well, Mr. Chairman, we would  
4                   like to take this opportunity on behalf of all of us to  
5                   extend our best wishes to Marilyn Callaghan, our court  
6                   reporter, who was married this weekend to Enrique  
7                   Bonaparte, and in honour of the occasion, we have  
8                   provided monetary morsals which you can find on your  
9                   desk, but congratulations.

10                  WITNESS PANEL: Congratulations.

11                  THE CHAIRMAN: The Board also extends its  
12                  congratulations.

13                  THE REPORTER: Thank you.

14                  THE CHAIRMAN: Ms. Seaborn?

15                  MS. SEABORN: And for those of who  
16                  weren't aware, I had trouble getting my assistant Mr.  
17                  Sutterfield to help me with this cross-examination  
18                  because I understand he was the best man at the  
19                  wedding.

20                  Q. I just want to look briefly, Mr.  
21                  Gordon, at the policy at page 577 of the witness  
22                  statement.

23                  MR. GORDON: A. Yes, I have it.

24                  Q. And under the title: Ineffective  
25                  Silviculture there is an example that says that:

1                   "While your free to grow standard may  
2                   be met there can be instances where your  
3                   silvicultural package was not effective  
4                   as your objective was not met."

5                   Is that correct?

6                   A. That's correct.

7                   Q. Now, with respect to area inspection  
8                   reports for normal operating areas, Mr. Martel asked a  
9                   question during Mr. Cassidy's cross-examination to Mr.  
10                  Cary as to whether these area inspection reports are  
11                  summarized in a similar fashion as Table 4.12.X. Do  
12                  you recall that, Mr. Cary?

13                  MR. CARY: A. Yes, I do.

14                  Q. And I believe the evidence was that  
15                  these reports are not in fact summarized in such a  
16                  fashion?

17                  A. I think I remember saying that. I  
18                  haven't got it in front of me, but yes.

19                  Q. And am I correct that any technical  
20                  surveys that are carried out at the management unit  
21                  level are not summarized in a table in the timber  
22                  management plan either?

23                  A. Some might be. Free to grow surveys,  
24                  stocking surveys, yes, some of them will be in the  
25                  timber management plan.

1                   Q. In terms of individual tables, but in  
2 the context of monitoring there is not a summary table  
3 that lists all the technical surveys that are done,  
4 some of which are done for the purpose of monitoring?

5                   A. No, there is no such list, but  
6 technical surveys, as I said, include all sorts of  
7 things, and free to grow, stocking survival are  
8 technical surveys and there is a summary in the TMP of  
9 stocking, for example, free to grow.

10                  Q. And in terms of the area inspection  
11 reports for compliance, there is no summary though?

12                  A. For normal operating areas?

13                  Q. That's right.

14                  A. That's correct.

15                  Q. Okay.

16                  MR. GORDON: A. I think I said earlier  
17 though that where you identify significant observable  
18 problems that you will summarize those in the report of  
19 past forest operations.

20                  Q. But that would be in a written  
21 format?

22                  A. That's correct.

23                  Q. And would you agree with me that that  
24 would entail by someone from MNR some judgments as to  
25 what they saw as being the more points from those

1       inspection reports to put in the report on past forest  
2       operations?

3                   A. That's correct.

4                   Q. And would you agree with me, Mr.  
5       Gordon, that it would be possible to summarize the area  
6       inspection reports and what I would call the other  
7       technical surveys that you do for monitoring purposes  
8       in a fashion similar to 4.12.X?

9                   A. I don't think so.

10                  Q. Why not?

11                  A. I think there is a better way of  
12       summarizing it using some of the tables that are now  
13       required. Depending on what kind of technical surveys  
14       the management forester has carried out or the staff  
15       have carried out, it may be appropriate to design for  
16       that individual management unit a specific table that  
17       supports what's said in paragraphs of discussion, and I  
18       think that's the appropriate way to go.

19                  Q. I take it the rationale then for  
20       summarizing compliance with respect to areas of  
21       concern, Mr. Gordon, is because the Ministry puts a  
22       greater priority on areas of concern?

23                  A. No, I wouldn't say that we put a  
24       greater priority on the areas of concern. Usually an  
25       area of concern very often is a value that is important

1 to someone else. So, therefore, recognizing that, we  
2 believe it is appropriate to provide more detailed  
3 information in the management plan in the report of  
4 past forest operations.

5 Q. And if it was demonstrated to you  
6 then that there were values that were important to  
7 other people that were largely within normal operating  
8 areas in terms of timber values, would you agree with  
9 me then that it could be useful for that person to have  
10 before them a companion table to 4.12.X which I would  
11 call 4.11.X?

12 A. I suppose I could agree to that. I  
13 would have to know what we are talking about  
14 specifically though. I don't agree with -- I don't  
15 disagree with the principle.

16 Q. Okay. What I would be looking at,  
17 Mr. Gordon, would be something - and I am trying to  
18 avoid getting caught up in terminology here - but  
19 something that gives you the package for normal  
20 operating areas in terms of your compliance effects and  
21 effectiveness in one package.

22 Now, if you look at compliance for areas  
23 of concern along with observable effects, as Mr.  
24 Straight has pointed out, you had that in front of you  
25 on a table, that is in the next plan, in the next

1       five-year plan for someone reviewing the plan to look  
2       at, what I would be contemplating is for normal  
3       operating areas you have got all the area inspection  
4       reports anyway, they are however not summarized in the  
5       same way as the area inspection reports are for AOCs,  
6       so you would summarize those and you would also include  
7       on that information any observable effect -- you would  
8       also include in that table any observable effects that  
9       MNR field staff have noted, as well as any results from  
10      the technical surveys which are used at the stand  
11      level. That's the concept.

12                  A. And in principle I agree with you,  
13       and the way MNR is proposing to do that is to provide  
14       written summaries that summarize on awful lot of  
15       information that you pick up stand by stand, and I  
16       would suggest it is inappropriate to include that in a  
17       timber management plan.

18                  If someone really wants that information,  
19       we could make it available to them and, as well, allow  
20       the unit manager to develop whatever specific tables  
21       will support the summary that he or she feels is  
22       appropriate.

23                  And the only thing we are doing different  
24       relative to areas of concern is we are putting in a  
25       special table that clearly notes where we had a

1       compliance problem and we are clearly identifying that  
2       for a given area of concern, and that's the only  
3       difference. We are doing all the other things.

4                   Q. And all I am suggesting is, that for  
5       those people who may value more than areas of concern  
6       potential effects in normal operating areas, having  
7       that information in a table format rather than through  
8       a written summary in a timber management plan may be  
9       more useful to them?

10          A. I suppose you are going to have to  
11       give me an example of what you are talking about so I  
12       can get my head around it.

13          Q. Well, I think we have pretty well  
14       agreed on the content. I think what you've said for  
15       the various technical surveys is that they are  
16       summarized in the timber management plan and in the  
17       report on past forest operations in a slightly  
18       different fashion than I am suggesting?

19          A. That's right. And for me personally  
20       nothing comes to mind relative to normal operating  
21       areas that's a major concern for the general public out  
22       there, the way you seem to be inferring. I need an  
23       example for me to go any further and try to be helpful.

24          Q. Well, I guess I am thinking in the  
25       situation that we looked at in 4.12 where you may have

1 compliance with your silvicultural package, you went  
2 out there and you did what you said you were going to  
3 do, but during an area inspection or later on down the  
4 line during one of your technical surveys you found you  
5 that you weren't in fact effective. That's the  
6 situation.

7 A. Right. And what we will do is, where  
8 that is happening at a reasonable scale or is  
9 considered significant, we will summarize that and that  
10 will be available to the public. And if that member of  
11 the public is really interested in that and they note  
12 that in the report of past forest operations that we  
13 have identified something that may be of concern to  
14 them and they want to get into more details, then all  
15 they have to do is talk to the unit forester.

16 If they want to get into the details of  
17 where it happened, exactly what happened in detail,  
18 then we will enter into that discussion and make  
19 whatever information we have available to that party.

20 Q. I'm not suggesting in the slightest,  
21 Mr. Gordon, that you wouldn't make information  
22 available to the public if they came in and asked, all  
23 I am suggesting is that similar to the treatment you  
24 have given areas of concern, that information for  
25 normal operating areas would be up front in the timber

1 management plan.

2 And in my understanding of the evidence,  
3 and as well as Mr. Martel's question, there is no  
4 companion document to 4.12.X where you summarize the  
5 area inspection reports, for example, for normal  
6 operating areas?

7 A. That's correct. There is no  
8 companion table and we don't feel it's necessary.

9 Q. Okay. Mr. Straight, I just want to  
10 ask you a few more questions about local monitoring.  
11 Would you turn to page 438 of the witness statement.

12 MR. STRAIGHT: A. Yes, I have it.  
13 That's Table 1, the start of Table 1?

14 Q. That's correct. Now, in terms of the  
15 aquatic, moose and tourism values, there is in addition  
16 to the provincial program an element of local  
17 monitoring, I think as we have discussed, by way of the  
18 area inspection process and stakeholder feedback and  
19 that's indicated in the far right-hand column of Table  
20 1?

21 A. Yes, that's correct.

22 Q. And I take it from this that public  
23 input in terms of both compliance and effects is  
24 valuable information for MNR?

25 A. Yes, that's correct.

1                   Q. And I note in Table 2, which begins  
2       at page 445, you have under the far right column and  
3       that column is entitled: Type of Effects and  
4       Effectiveness Monitoring, there are a number of  
5       categories that refer to local monitoring?

6                   A. Yes, that's true.

7                   Q. Okay. I don't think it is necessary  
8       to turn to them, but with respect to water crossings,  
9       the environmental guidelines provide for inspection  
10      every three years on naturally abandoned roads and  
11      every year on maintained roads?

12                  A. Yes.

13                  Q. And a member of the public could have  
14      input into that inspection process if they were using a  
15      road and, for example, saw a blocked culvert or a water  
16      crossing that was flooded and closed to washout?

17                  A. Yes, the public could provide us with  
18      that kind of information and sometimes they do.

19                  Q. And, again, that information is  
20      useful if a member of the public comes in and tells the  
21      district manager that they have spotted something out  
22      there that they are concerned about?

23                  A. Yes, that information is potentially  
24      very useful.

25                  Q. And I think in fact in the area

1       inspection form there was a box for public report, and  
2       the evidence was that that didn't indicate that the  
3       public check compliance there, that would just be an  
4       indication that you have received a public report with  
5       respect to that area?

6                   A. Yes. I think Mr. Cary provided some  
7       clarification on the fact that MNR will be doing the  
8       actual inspections, but that we certainly do encourage  
9       and use information that's provided by the public.

10                  Q. And, Mr. Straight, would you agree  
11       with me that if a road is closed, then you would lose  
12       an element of your local monitoring insofar as you  
13       wouldn't have public input past the gate; I mean, the  
14       public can't go past the gate and you would lose that  
15       element of comment?

16                  A. The public may be past the gate.

17                  Q. Well --

18                  A. I mean, people may go in by  
19       traditional areas. They may not comply, first of all,  
20       they may have flown in by an aircraft which was  
21       legitimate, they may have walked in which is a  
22       non-motorized vehicle. There are a number of ways that  
23       public could be behind the gate.

24                  Q. I understand that that's the case,  
25       that often the public is beyond the gate, but that's

1       not the intention, that is not MNR's wish when they  
2       gate a road?

3                   A. Well, you are generalizing and  
4       generally on a road if there is a gate the intent is  
5       not to allow the public in general beyond the gate,  
6       right.

7                   Q. And certainly not in with a vehicle?

8                   A. That may well be the case.

9                   MS. SEABORN: Mr. Chairman, I want to  
10       file a new exhibit. I provided Ms. Murphy with a copy  
11       of this letter yesterday. It is a letter dated  
12       September 14th from MNR addressed to -- it is actually  
13       addressed 'Dear Sir' but I understand that it was a  
14       letter that was sent out to members of the public who  
15       were on the timber management mailing list for the  
16       Domtar/Armstrong Management Unit. That would be  
17       exhibit...?

18                   THE CHAIRMAN: 968.

19                   MS. SEABORN: Thank you. (handed)

20                   THE CHAIRMAN: Thank you. Can we have an  
21       extra one, please?

22                   MS. SEABORN: Sorry, Mr. Chairman.

23       ---EXHIBIT NO. 968: Letter dated September 14th from  
24       MNR to members of the public  
25       re: Domtar/Armstrong management  
            unit.

1                   MR. STRAIGHT: Ms. Seaborn, do I need to  
2 have a copy of that?

3                   MS. SEABORN: Oh, I'm sorry. I provided  
4 a couple of copies to Ms. Murphy yesterday, I thought  
5 you and Mr. Gordon had one.

6                   MR. GORDON: I have one.

7                   MS. BLASTORAH: Mr. Chairman before we  
8 move on from the last question, I had one point of  
9 clarification.

10                  Ms. Seaborn - I think it was an  
11 unintentional way of expressing things but I would like  
12 to clarify it - she asked Mr. Straight about road  
13 closure and the effect of that closure on the public  
14 being behind the gate. I think he indicated that the  
15 public could still go in by traditional means, by  
16 walking and flying and so on and I want to clarify.

17                  Ms. Seaborn indicated that certainly the  
18 intent was not to have people behind the gate, which is  
19 consistent with what Mr. Straight said in terms of  
20 driving down the road, but her comment was 'certainly  
21 not in with a vehicle'.

22                  I want to clarify that that is not to say  
23 that someone could not go behind the gate other than in  
24 a vehicle and as well that was not the intent, that  
25 certainly wasn't the evidence of Panel 14. I want to

1       clarify that point. I don't think that was the intent  
2       of her comment, but I just wanted to clarify that.

3                     THE CHAIRMAN: Well, what was your  
4       intent, Ms. Seaborn?

5                     MS. SEABORN: Well, to me if the road is  
6       gated they are going to walk in and fly in and perhaps  
7       people go in on snowmobiles in the wintertime.

8                     My suggestion is that if a road is gated  
9       and someone goes up it in a vehicle, then presumably  
10      the message to the public is that they are not to drive  
11      beyond that gate. If they get out and choose to hike  
12      in that's a perfectly different question. So in that  
13      sense I don't think I am in disagreement with Mr.  
14      Straight.

15                    MS. BLASTORAH: That was the  
16      clarification I sought, Mr. Chairman.

17                    THE CHAIRMAN: Okay, Thank you.

18                    MS. SEABORN: Q. Now, with respect to  
19      this letter, Mr. Straight, did you review this  
20      correspondence over the evening?

21                    MR. STRAIGHT: A. I did not have an -- I  
22      did not see this particular correspondence last night.

23                    MS. MURPHY: And I apologize. My friend  
24      did give that to me last night, I provided it to Mr.  
25      Gordon and asked him to get some further information

1 and I just neglected and forgot to give it to Mr.  
2 Straight.

3 MS. SEABORN: That's fine. I can ask Mr.  
4 Gordon.

5 Q. Mr. Gordon, you have read this  
6 four-page material?

7 MR. GORDON: A. Yes, I have.

8 Q. And as I understand this notice, it  
9 is with respect to a request that a local outfitter  
10 made for the realignment of a road corridor?

11 A. That's correct. My understanding in  
12 talking with the unit forester for the management unit  
13 yesterday was that there was an approved location in  
14 the timber management plan, and this plan was written  
15 under the old system.

16 And if you look at the map which is on --  
17 if you look at the last page, this one outfitter had a  
18 camp on the lake called Gart Lake on the right-hand  
19 side of the page and, as well, you will see coming out  
20 of Gart Lake is the Big River.

21 Q. Yes.

22 A. And if you go towards the left-hand  
23 side of the page, he or she also had a camp down there.  
24 So he agreed with the approved location recognizing  
25 where the two camps were.

1                    Since the plan was approved, the  
2 ownership of those two camps had changed and so there  
3 was a separate owner for the one in Gart Lake and a  
4 separate owner for the one downstream on the Big River.  
5 And when the district manager met with the local  
6 outfitters to advise them of what was going to happen  
7 in the upcoming year, the outfitter downstream asked if  
8 the road could be moved further away from his camp.  
9 And so they went through a review process and they came  
10 up with a new approved location.

11                  Q. I was a bit unclear when first  
12 reading this, but I understand looking at the map on  
13 the last page these are corridors, and it says approved  
14 road location, proposed road location. We are not  
15 talking about moving -- abandoning a road that had  
16 already been built, we are just dealing with corridors;  
17 is that correct?

18                  A. Yes, as far as I understand, the  
19 constructed road was a number of miles to the south.

20                  Q. Right. Now, looking at the third  
21 page of Exhibit 968, you will see, Mr. Gordon, that  
22 there are two roads that form a V?

23                  A. Yes, I see that.

24                  Q. Okay. On the left-hand hand side of  
25 the V, can you confirm for me that's the McKinley Lake

1           Road?

2           A. I'm sorry, I can't.

3           Q. It is my information that it is  
4       McKinley Lake Road.

5           MS. SEABORN: The reason why I bring this  
6       to your attention, Mr. Chairman, is we filed an  
7       interrogatory with respect to this particular  
8       management unit in Panel 8, and that's Exhibit 412,  
9       which I had asked Ms. Devaul to provide to you. I  
10      don't think it is necessary for you to go to it, but  
11      the question that we asked was:

12           "Over the past five years on the  
13       Domtar/Armstrong Company Management  
14       Unit..."

15           I am sorry, we asked about with respect  
16       to gating of roads and the answer was that:

17           "Over the past five years on the  
18       Domtar/Armstrong Company Management Unit  
19       five new primary access roads have been  
20       constructed of which three are gated."

21           The gated roads, one of the gated roads  
22       that is referred to in the interrogatory response is  
23       the McKinley Road and it's my understanding that if you  
24       look at the third page of this document the McKinley  
25       Road is on the left-hand side.

1 MS. MURPHY: Mr. Chairman, I just rise.

2 When this document was provided to me last night it was  
3 indicated to me that some questions would be asked  
4 about it.

5 I asked my friend specifically what kind  
6 of information would the witness need to respond and I  
7 got very little in the way of direction other than just  
8 phone up and ask about this document which is an  
9 amendment document.

10 The witness of course last night did what  
11 he could, but I am concerned that he is now being asked  
12 some fairly specific information which he wouldn't have  
13 asked for and we weren't asked to obtain.

14 THE CHAIRMAN: Well, in that case he will  
15 just have to respond it is not within his knowledge.

16 MS. MURPHY: Well, again then, the fact  
17 that this may or may not be the McKinley Lake Road is  
18 not evidence, that's my concern.

19 THE CHAIRMAN: Well, she has indicated to  
20 the Board that it is her understanding it is McKinley  
21 Lake Road. The witnesses cannot confirm that, Mr.  
22 Gordon has stated that, that's clearly on the record.

23 I don't think that prevents Ms. Seaborn  
24 asking some questions on the assumption, subject to  
25 verification, that that is the McKinley Lake Road.

1 MS. SEABORN: And, Mr. Chairman, in the  
2 public notice on page 2 of this document it says in the  
3 second paragraph:

4 "The proposed amendment would move the  
5 McKinley Lake Road one kilometre  
6 northeast from its approved location  
7 where the road crosses the Big River."

8 Now, all I am trying to establish through  
9 documents that have already been filed is that that  
10 road has been gated.

11 And what I wanted Mr. Gordon to confirm  
12 for me is that looking at the two roads on the maps, so  
13 there was no confusion, the McKinley Lake Road was the  
14 one in the left-hand side of the V.

15 Now, he said he is not sure and that's  
16 fine, that's my information. If MNR wants to come back  
17 and tell me I am wrong, I will have to accept that.

18 Q. Now, it is my information that the  
19 McKinley Road, Mr. Gordon, is approximately 15 miles  
20 long and the gate that is on that road is at  
21 approximately mile 6. Are you aware of that  
22 information?

23 MR. GORDON: A. No, I can't comment on  
24 that.

25 Q. And the gate is situated before the

1 amendment area. Would you agree with that?

2 A. I believe you are correct, but I am  
3 not 100 per cent sure. I just don't know the details.

4 Q. Well, I am just saying that from  
5 common sense in that the amendment area has to do with  
6 road corridors and I assume you are not gating a  
7 corridor?

8 A. Right.

9 Q. So the gate must be before we hit the  
10 amendment area, that's all I was suggesting.

11 A. Yeah. I must apologize to the Board.  
12 When I talked to the unit forester I took the tackle  
13 and asked questions, was -- and this is Panel 16 and we  
14 are dealing with monitoring, and I advised the unit  
15 forester that, you know, Panel 15 had dealt with  
16 planning issues, so I didn't get into any details about  
17 planning issues. I specifically asked, because I  
18 wanted to be ready, I said: Well, what type of  
19 monitoring questions do you think I am going to get.

20 THE CHAIRMAN: Well, I don't think the  
21 Board can criticize in any way, Mr. Gordon, your  
22 attempts to find out information.

23 You were provided this information at a  
24 late date, you attempted to find out what you could do  
25 about it, not knowing what questions would be asked,

1 and that is the problem of counsel that provide  
2 documentation in this fashion without giving an  
3 indication of where their questions are going to lead  
4 so that you can properly prepare yourself.

5 So you answer the questions put to you to  
6 the extent that you can and indicate clearly where you  
7 can't answer them.

8 MS. SEABORN: Q. Looking at the last  
9 page, Mr. Gordon, there is a star on the map that  
10 refers to an eagle's nest.

11 MR. GORDON: A. Yes. It is my  
12 understanding that that may be an eagle's nest or it  
13 may be an osprey nest. That's based on my conversation  
14 yesterday. It is definitely a stick nest.

15 Q. Right. And my point is really quite  
16 simple, Mr. Gordon, in terms of this notice: This is a  
17 notice that was sent to members of the public asking  
18 them to comment on a road corridor change.

19 Now, it is my information that the  
20 McKinley Road is 15 miles long and the gate appears at  
21 mile 6. Would you agree with me that if someone wanted  
22 to go in and look at that area they would be prevented  
23 from doing so, whether it was to view the eagle's nest  
24 or to go in and look at the water crossings over the  
25 Big River or for whatever purpose, they would not be

1 able to get beyond the gate subject to the comments  
2 that Mr. Straight made about hiking in?

3 A. First of all, I would like to make a  
4 comment before I answer your question.

5 No. 1, the two new tourist outfitters  
6 that were involved, they were satisfied with the new  
7 location. It is my understanding that there was two  
8 other people who commented on the proposal and there  
9 was no problem identified by those individuals, and I  
10 would suggest to you, and I should not be second  
11 guessing the district manager, but I am going to try  
12 and answer your question.

13 If someone had a bona fide reason for  
14 wanting to get up and look at that site and they  
15 presented that rationale to the district manager and  
16 the gate closing says you can't go up there, I would  
17 suggest that the district manager would listen to that  
18 rationale, and if that individual has a bona fide  
19 reason for going up there he would make an exception.  
20 Again, you have to recognize I am second guessing the  
21 district manager because I don't know exactly what  
22 happened.

23 Q. And I can agree with you, Mr. Gordon,  
24 that it is my understanding that that is the practice  
25 in the sense that if someone came in and said they did

1 want to go beyond the gate into an area they would be  
2 allowed to do so.

3 My only point is that in terms of a  
4 public notice going out, there is no indication in that  
5 notice that that would be possible for someone. There  
6 is no indication in the notice that the road is gated  
7 so that someone who received this in the mail and wants  
8 to go have a look at the new corridor may drive up  
9 there and find that there is a gate there and there  
10 would be no opportunity. On the other hand, you are  
11 sending out a public notice asking for public input.

12 A. I understand your concern and perhaps  
13 the public notice could have been clearer, but I would  
14 suggest to you that if someone did have a concern they  
15 probably would have some local knowledge about the area  
16 and they would know that there was a gate there.

17 Q. In your view, in a situation such as  
18 this where you do have areas of concern that are beyond  
19 a gate, do you think that anything additional should be  
20 done in terms of local monitoring to compensate for the  
21 fact that you would be unlikely to have public input  
22 with respect to monitoring of those areas of concern?

23 A. No.

24 THE CHAIRMAN: Well, I think it is a  
25 quantum leap, Ms. Seaborn, to assume there may be no

1       public input. There may be no easy access for the  
2       public to view whatever the problem or area of concern  
3       is all about, but that doesn't necessarily mean that  
4       they aren't going to have input.

5                     MS. SEABORN: No, Mr. Chairman, my  
6       suggestion is that the public would not be in a  
7       position to go and observe those particular areas of  
8       concern because they would not be able to get in.

9                     THE CHAIRMAN: Unless they requested  
10      access.

11                  MS. SEABORN: And my point is quite  
12       simple: There has been problems that have been brought  
13       to my attention where members of the public would like  
14       to go into areas beyond gates to view either areas of  
15       concern or areas of normal operations, and all I am  
16       pointing out is that this is a concern.

17                  MS. MURPHY: Well, does my friend recall  
18       evidence about these concerns?

19                  THE CHAIRMAN: I don't know.

20                  MS. SEABORN: Well, there has been other  
21       evidence about these concerns.

22                  THE CHAIRMAN: But apart from that  
23       question, Ms. Murphy, Panel, is there any problem that  
24       you can foresee in putting a statement in these kinds  
25       of notices indicating if the public wishes access with

1 respect to the matters or the area of concern covered  
2 by the notice, such would be allowed upon request to  
3 the Ministry or words to that effect?

4                   In other words, there is a clear  
5 indication in here that you do have a right to see it  
6 if you request it and that right is effectively set out  
7 in the notices to parties to know that in advance.

8                   MR. GORDON: I think that's a good idea.

9                   THE CHAIRMAN: Would that alleviate your  
10 concerns, Ms. Seaborn, or that of your client, that  
11 kind of statement put in the notice itself?

12                  MS. SEABORN: It would certainly be one  
13 step that would be very helpful, Mr. Chairman.

14                  MS. MURPHY: Bearing in mind of course  
15 there is no road here. I mean, whether anyone can get  
16 behind the gate is irrelevant in my view, the point is  
17 there is no road.

18                  MS. SEABORN: Well...

19                  THE CHAIRMAN: Well, perhaps in that  
20 example, but we are dealing with the question of  
21 providing the opportunity for the public to observe the  
22 subject matter of what the amendment is all about. And  
23 if there is some kind of prohibition, whether it is  
24 under the Public Lands Act or anything else, for them  
25 observing it freely, it appears that it is not the

1       Ministry's intention to prevent that observation and  
2       will in fact accommodate it.

3                     But the concern is the public may not  
4       know that and the way to get around that, in the  
5       Board's view, probably quite simply is to put something  
6       to that effect of that right in a notice.

7                     MR. GORDON: Yes, that's correct, Mr.  
8       Chairman.

9                     MS. SEABORN: Mr. Chairman, in response  
10      to Ms. Murphy's comment, of course there is no road, we  
11      are talking about road locations on the last page.

12                   On the third page though there is a V  
13      that marks two roads, the McKinley Road is on the  
14      left-hand side, it leads into the amendment area. My  
15      information is that there is a gate at mile 6 of the  
16      15-mile road that leads in the amendment area. My  
17      point is, if someone wanted to get into the amendment  
18      area it would be a long walk.

19                   Q. Mr. Gordon, you will recall that in  
20      your evidence-in-chief Ms. Blastorah invited you to  
21      comment on three pages from Exhibit 911 which is the  
22      green binder that was filed by Mr. Campbell during our  
23      Panel 15 cross-examination?

24                   MR. GORDON: A. Yes, I recall that.

25                   Q. And were you aware that when we

1 introduced these pages we made a point of confirming  
2 with the witnesses in Panel 15 that there was a wide  
3 variability in the documentation and level of analysis  
4 that is currently being provided in the AOC  
5 documentation?

6                   A. Yes.

7                   Q. And were you aware that in putting  
8 forward our suggestions for ways of documenting an AOC  
9 package as one example, we explained that we had taken  
10 our concepts from a variety of recent timber management  
11 plans and the training material?

12                  A. Yes, I was fully aware of that.

13                  Q. And one of the things that we found  
14 in recent timber management plans was reference to  
15 effectiveness monitoring.

16                  A. Yes, I understand that.

17                  Q. Okay. Now, in response to Ms.  
18 Blastorah's questions you and Dr. MacLean gave evidence  
19 that you felt that delivery of a local effectiveness  
20 monitoring program was unworkable. Is that a fair  
21 summary of your position?

22                  A. Yes. We didn't feel that it was  
23 appropriate to outline a proposed effects/effectiveness  
24 monitoring plan within the timber management plan.

25                  MS. SEABORN: Now, Mr. Chairman, I

1       considered how to deal with this matter and I was  
2       thinking about going back to all of the timber  
3       management plans that we had reviewed very carefully  
4       and taking the Board through the examples and our  
5       rationale for putting in our version of an AOC planning  
6       package that included compliance and effectiveness  
7       together.

8                   I think that for a variety of reasons and  
9       for the main reason being that these are details that  
10      we see are more appropriately left to matters of  
11      negotiation, I am not going to do that, and we are  
12      prepared to leave this matter to the negotiation  
13      process.

14                  And the only other point that I want to  
15      make is that, in our view, if you are checking for  
16      compliance and noting observable effects, effectiveness  
17      can be assessed at the local level. And I don't want  
18      to get caught up in semantics again with witnesses as  
19      to what it is called and I don't want to get caught up  
20      in whether what we are proposing is a local  
21      effectiveness monitoring program, because when I use  
22      the word program that seems to cause a level of  
23      discomfort among the witnesses.

24                  I think what we are proposing is  
25      something much simpler than that and, for those

1       reasons, rather than dealing with it now in front of  
2       the Board, we intend to deal with it in February and  
3       see how much headway we can make.

4                     THE CHAIRMAN: Very well. And then of  
5       course you will have the opportunity in your own case  
6       to put it forward if you don't make sufficient headway.

7                     MS. SEABORN: That's correct. I just  
8       wanted the Board to be aware as to what our position  
9       was on that because we view this as being very  
10      important.

11                  THE CHAIRMAN: Very well.

12                  MS. SEABORN: Q. Mr. Gordon, could you  
13       turn to page 516 of your Panel 16 witness statement.  
14       If you look at the second full paragraph.

15                  MR. GORDON: A. Yes, I have got it.

16                  Q. And the last sentence says:

17                  "OMNR through its representation on the  
18       Ontario Forestry Research Committee will  
19       be approaching the Canadian Forestry  
20       Service with the aim of developing a  
21       study to assess the effects of tree  
22       biomass removal by harvesting on new  
23       forest growth and yield rates."

24                  Has that approach occurred to date?

25                  A. Yes, we have communicated our desire

1 to discuss this in an Ontario Forestry Research  
2 Committee meeting and it is my understanding it will be  
3 on the agenda for the meeting that is tentatively  
4 scheduled for I believe April 17th, 1990.

5 Q. And a study of this nature is not  
6 referred to that I could find in MNR's draft terms and  
7 conditions; is that correct?

8 A. That's correct.

9 Q. Do you have any objection to  
10 including the provision for this study in the terms and  
11 conditions?

12 A. I would prefer to wait to when it is  
13 discussed at the Ontario Forestry Research Committee  
14 and see what comments they have and that would affect  
15 the wording of any such condition.

16 Q. Okay. I guess my concern is that it  
17 looks like that's not going to be discussed again until  
18 April, 1990 and we are going to be looking at terms and  
19 conditions prior to that date.

20 MS. SEABORN: And that is certainly a  
21 study that our client views as being important, Mr.  
22 Chairman.

23 THE CHAIRMAN: Well, it could certainly  
24 be put in any draft term and condition because those  
25 terms and conditions may well be revised to some extent

1 as process unfolds.

2 MS. SEABORN: Yes, thank you.

3 Q. Mr. Gordon, I don't think it is  
4 necessary to go to it, but in Exhibit 913, which was  
5 the MNR terms and conditions that was highlighted -- do  
6 you recall that version of the terms and conditions.  
7 The provisions aren't changed, it is just that it was a  
8 highlighted version by MNR?

9 A. I would like to get my terms and  
10 conditions.

11 Q. Sure.

12 A. Okay. I have got a complete set of  
13 MNR's draft terms and conditions.

14 MS. MURPHY: I don't think the witness is  
15 familiar with the difference between what he has in his  
16 hand and Exhibit 913.

17 MS. SEABORN: Q. Well, Mr. Gordon, my  
18 understanding was that Exhibit 913 was intended to be  
19 an indication from MNR as to those terms and conditions  
20 which are new in the sense that they are not referred  
21 to in the Class EA Document or in the Timber Management  
22 Planning Manual. Are you aware of that?

23 MR. GORDON: A. No, I'm not.

24 Q. Okay. Is anyone else on the panel  
25 aware of that, Exhibit 913?

1                   MR. CARY: A. No.

2                   Q. Mr. Gordon, with respect to the  
3 funding requirement, can you confirm for me that the  
4 estimates relate largely to funding of what I would  
5 call new terms and conditions in the sense that you are  
6 talking about funding of terms and conditions above and  
7 beyond what is already provided for in the Class EA?

8                   MS. MURPHY: He just said he is not  
9 familiar with this document and doesn't know which ones  
10 are new. I don't know how he can respond.

11                  MS. SEABORN: Well, Ms. Murphy, perhaps  
12 you can speed it up for me then. I don't want to have  
13 to go through each one. It was my understanding, and  
14 if we compare Exhibit 913, which is the highlighted  
15 version of the draft terms and conditions, with Mr.  
16 Gordon's Exhibit 936 where he has estimates for draft  
17 terms and conditions, the estimates relate largely to  
18 those terms and conditions that were highlighted.

19                  MS. MURPHY: Well, I am going to have to  
20 do this to speed it up. I am not familiar with Exhibit  
21 913 either. Frankly, at the end of Panel 15 we were  
22 busy preparing Panel 16.

23                  Perhaps my friend can simply let me know  
24 what her question is and we will respond in due course  
25 when I have a chance to look at and ensure we are

1 giving her the appropriate answer to the appropriate  
2 question.

3 MS. SEABORN: Okay, well, that's fine.  
4 What I would like to know Ms. Murphy, are there any --  
5 in Exhibit 936 which are the funding estimates, with  
6 respect to estimates of new funding, does any of this  
7 new funding relate to matters that are in the terms and  
8 conditions that are not highlighted in the sense that  
9 they are already covered in the Class EA?

10 My comparison is that if you look at the  
11 terms and conditions in Exhibit 936 they largely relate  
12 to the same terms and conditions as are highlighted in  
13 Exhibit 913. That's all I want you to confirm.

14 Q. And, Mr. Gordon, would it be fair to  
15 say that the costs associated with implementing the  
16 terms and conditions are the costs of good timber  
17 management. Would you agree with that statement?

18 MR. GORDON: A. Just give me a moment on  
19 that one, please.

20 Q. Certainly.

21 A. Yes, I would say it is the cost of  
22 carrying out good timber management, and perhaps even  
23 going further because of what some of the studies  
24 entail, in general terms good resource management.

25 Q. Thank you.

1                   Q. And maybe Mr. Straight is the best  
2 person to answer this question. Mr. Straight, could  
3 you turn to page 17 of the terms and conditions.

4                   MR. STRAIGHT: A. This is Exhibit 700?

5                   Q. Yes, or Exhibit 913. It doesn't  
6 matter which one.

7                   A. Page 17. I have it, yes.

8                   Q. And under term and condition No. 40  
9 there is a list of MNR's approved implementation  
10 manuals, guidelines, et cetera; correct?

11                  A. Yes.

12                  Q. Now, if you go over to page 18 under:  
13                    "Construction and operational manuals  
14                    include..."

15                  A. Yes.

16                  Q. And the last one is the Code of  
17 Practice for Timber Management Operations in Riparian  
18 Areas, 1989. Is it your understanding from these terms  
19 and conditions that the Code of Practice has the same  
20 status as the Environmental Guidelines for Access Roads  
21 and Water Crossings?

22                  A. The same status in what context, Ms.  
23 Seaborn?

24                  Q. Well, in the sense that it is lumped  
25 in with the construction and operational manuals and

1 where I read in the evidence requirements for use of  
2 construction, operational manuals I can include in that  
3 the Code of Practice as being one of those manuals?

4                   A. We have lumped it in that particular  
5 category, as I would understand it - and Mr. Cary or  
6 Mr. Gordon may be able to help if I run into trouble  
7 here - my understanding is it deals with operational  
8 matters, that's why it is specifically in there. My  
9 understanding is that its application is considered to  
10 be mandatory, if you will, and in that context it has a  
11 similar status as things like the Environmental  
12 Guidelines for Access Roads.

13                   Q. Thank you.

14                   A. Is that correct, Mr. Cary, Mr.  
15 Gordon? That's my understanding.

16                   MR. CARY: A. Yes, that's correct, Mr.  
17 Straight.

18                   Q. Thank you, Mr. Cary.

19                   And, Dr. Euler, I promised a question for  
20 you.

21                   DR. EULER: A. I know and I have been  
22 waiting all this time on pins and needles.

23                   Q. This may have been in the material, I  
24 wasn't too clear, for the effects/effectiveness  
25 monitoring program with respect to the moose

1 guidelines, is it your intention to use the 130-hectare  
2 provision for the size of clearcuts as contained in the  
3 guidelines rather than the interim direction which  
4 deals with deviation reporting?

5 A. Yes.

6 Q. Thank you.

7 A. That was easy, Ms. Seaborn.

8 Q. I didn't say it was going to be  
9 difficult.

10 MS. SEABORN: Those are all my questions,  
11 Mr. Chairman. Thank you, members of the panel.

12 THE CHAIRMAN: Thank you, Ms. Seaborn.

13 Well, ladies and gentlemen, we are  
14 proposing to adjourn at this time to allow the Ministry  
15 an opportunity to prepare for re-examination. We  
16 understand, Ms. Murphy, that you will not be longer  
17 than two hours; is that correct?

18 MS. MURPHY: That's correct, probably  
19 less.

20 THE CHAIRMAN: If we then returned at  
21 1:00, would that give you sufficient time to prepare?

22 MS. MURPHY: Yes, it would.

23 THE CHAIRMAN: Very well. We will  
24 adjourn until one o'clock. Thank you.

25 ---Luncheon recess taken at 11:25 a.m.

1            ----On resuming at 1:10 p.m.

2                         THE CHAIRMAN: Thank you. Be seated,  
3                         please.

4                         MS. MURPHY: Mr. Chairman, I will be  
5                         filing one document.

6                         MR. CASSIDY: Are you sure you are not  
7                         going to file 33?

8                         MS. MURPHY: One. I will be filing one  
9                         document and I propose to do that right away so we  
10                        don't have to interrupt.

11                        This is a letter or memorandum dated  
12                        September 26th, 1989. It is from Mr. A. J. Stewart who  
13                        is Regional Director in Algonquin Region and it is to  
14                        the district managers in Algonquin Region and to the  
15                        director.

16                        (adjusting microphone)

17                        All right, I think we are operating  
18                        again. And also to the Director of the Leslie Frost  
19                        Centre.

20                        ---Discussion off the record

21                        THE CHAIRMAN: That will be Exhibit 969.

22                        ---EXHIBIT NO. 969: Memorandum from A.J. Stewart,  
23                        Regional Director of Algonquin  
24                        Region to district managers and  
                            Director of Leslie Frost Centre,  
                            dated September 26, 1 989.

25                        RE-DIRECT EXAMINATION BY MS. MURPHY:

1                   Q. Now, Dr. Euler, you indicated to the  
2 Chairman a couple of days ago that you did have some  
3 concern about one answer that you gave to Mr. Hanna and  
4 you suggested that you would like the opportunity to  
5 expand on that. Why don't you just take that  
6 opportunity now.

7                   DR. EULER: A. Okay. Thank you very  
8 much.

9                   My concern, Mr. Chairman, is specifically  
10 for the other wildlife. It would be, my concern is  
11 that in the past the Ministry has not been able to  
12 assure the Board or the public in fact that we are  
13 providing habitat for all of the wildlife species that  
14 are out there, and we have made our best estimate that  
15 that is in the range of 70 per cent.

16                  THE CHAIRMAN: You mean 30 per cent.

17                  DR. EULER: Or 30 per sent, I am sorry  
18 sir. And while my testimony is that we can never be  
19 absolutely certain that one hundred per cent of the  
20 species have habitat provided for, I think we can do  
21 better and I have been advocating that internally  
22 within the Ministry and I think the Ministry is  
23 responding to that, albeit slower than I would wish and  
24 I think slower than some of our critics would wish.

25                  So part of the concern here is the speed

1 at which we are dealing with those issues, and it would  
2 have been my value judgment to arrange this money in  
3 such a way that we could have gone at that question a  
4 little sooner than we are currently doing it; but, at  
5 the same time, I think it's important to recognize that  
6 those issues are recognized and we are moving on them.

7 And you have also heard in the course of  
8 evidence the number of parties who are advocating that  
9 we use various tools and techniques, and those are  
10 issues that we need to discuss with some care and  
11 concern.

12 But I think it's important that we  
13 recognize as one of the outcomes of this hearing is  
14 that the Ministry be encouraged to do the very best  
15 they can to deal with all of the species of wildlife  
16 that are in that forest and to move in all due speed to  
17 get that done.

18 And we also talked about money, and one  
19 of the problems with money is that if we get too much  
20 money too fast it may not be spent properly. And the  
21 concern here is that we move carefully and thoughtfully  
22 in a measured way. And so that if more money comes our  
23 way we have opportunity to plan for it, carefully and  
24 thoughtfully, and that the Board I hope will encourage  
25 that process, whether we use habitat supply analysis or

1 indicator species or whatever, that the goal is to  
2 ensure that habitat is present for all the creatures  
3 that are there as best we can.

4 THE CHAIRMAN: All right. In that light,  
5 Dr. Euler, we heard evidence that when the evaluation  
6 was being done and the budgets were being struck with  
7 respect to how much money would be required, that there  
8 wasn't any cap put on it per se at the outset, but that  
9 the workshop participants used their best judgment as  
10 to what was required to get the job done.

11 Now, given the Exhibit 936, I think it  
12 was, that indicated what the breakdown was between  
13 wildlife, other species, featured species, fisheries,  
14 tourism, et cetera, and given the fact that you have  
15 expressed some indication that you would like the speed  
16 at which concerns with respect to the other 30 per cent  
17 were addressed to perhaps improve, what in your view  
18 would be required in terms of extra money to proceed at  
19 the speed that you would like to see the Ministry  
20 proceed, bearing in mind your last comment which was:  
21 You can't have too much money at a particular time if  
22 you can't properly utilize those funds in a measured  
23 and well considered way?

24 DR. EULER: Well, you see we have had a  
25 lot of very vigorous discussions within the Ministry on

1           that topic and if I could roll the clock back, see, I  
2           would have allocated the money within the wildlife  
3           program differently; I wouldn't have put as much money  
4           into that moose program because that moose program is a  
5           first rate program, it's excellent. But we already  
6           have a certain about of predictability there and I  
7           would have put more of the money on those areas where  
8           unknowns are truly unknown. We don't know how great  
9           gray owls respond to timber management, we can't even  
10          predict the direction.

11                 The problem is that given all of the  
12           things that have happened and the fact that we make  
13           these decisions with very vigorous discussion and we  
14           have a clear set of decisions there now, my advice now  
15           is that we proceed on the way we are at about the level  
16           of spending that we have allocated. And we can't turn  
17           that clock back, so there's no point in crying over  
18           decisions that might have been made in the past or who  
19           said what about what, when and where.

20                 THE CHAIRMAN: Let's work from now  
21           forward.

22                 DR. EULER: Well, I would advocate that  
23           the current program of effectiveness monitoring be  
24           continued the way it is.

25                 THE CHAIRMAN: With that level of

1 funding?

2 DR. EULER: Yes. And what we will do  
3 then, our next move is to have a workshop in early 1990  
4 in which we bring in experts from everywhere that we  
5 need to bring them in, and we sit down and we say:  
6 What is a good program. We look at that very  
7 carefully. And if after a thorough look at that  
8 situation more money is needed, I think that we can  
9 make a case through the Ministry that more money is  
10 needed in that process. And I think that's the way to  
11 handle it, and I think if we need more, it can be made  
12 available in a more measured way that way.

13 THE CHAIRMAN: Will the results of that  
14 workshop be in a form that whatever its recommendations  
15 may be will be before this Board likely before we rise?

16 DR. EULER: Let me tell you what that  
17 schedule is, because I'm not sure when you are going to  
18 rise.

19 THE CHAIRMAN: I mean for good.

20 DR. EULER: I'm not sure when you are  
21 going to rise for good. We are going to have that  
22 workshop in early 1990, so that will be -- let's say  
23 April, approximately April in which we bring together  
24 these experts.

25 Following that there will probably be a

1 second workshop in which we outline the hypotheses and  
2 the questions that need to be asked and estimate the  
3 kinds of money that would be needed.

4 My best estimate is that we would finish  
5 that plan late in calendar year 1990 and, of course,  
6 when that is finished it will be available to the Board  
7 and indeed part of the purpose of that workshop is to  
8 make that plan widely available to the public so they  
9 can see what we are doing, how they can be part of it  
10 and where we would like to put more money to ensure  
11 that we have a better percentage of the species habitat  
12 needs provided for.

13 THE CHAIRMAN: Well, obviously we don't  
14 know what the results of any such workshop are and, in  
15 addition, we haven't heard the further submissions of  
16 other parties on the issue, and presumably the Board  
17 has no jurisdiction to order that money be provided.

18 DR. EULER: Mm-hmm.

19 THE CHAIRMAN: Having said that, the  
20 Board probably has the jurisdiction to suggest in its  
21 decision what level it considers appropriate bearing in  
22 mind the evidence before it.

23 DR. EULER: That's right. And it would  
24 probably be helpful, at least in my opinion, if the  
25 Board encouraged the Ministry to take steps to provide

1           habitat for a greater percentage of the species than we  
2           currently provide for.

3                         THE CHAIRMAN: Okay. Thank you.

4                         MS. MURPHY: Q. Thank you.

5                         Now, Mr. Gordon, my friend Ms. Cronk  
6           asked you a number of questions about second-year  
7           survival assessments and that was at the beginning of  
8           that cross-examination for OFIA. Do you recall that?

9                         MR. GORDON: A. Yes, I do.

10                  Q. And, in particular, you have been  
11           asked to ascertain whether a specific figure for the  
12           cost of second-year survival assessments could be  
13           broken out from the new funding needs you discussed,  
14           and you have undertaken to attempt to do that.

15                  A. Yes, I will, yes.

16                  Q. I just would like to ask you this  
17           question: Given your understanding of the orders of  
18           magnitude being considered in those funding estimates,  
19           what is the likelihood that you will be able to  
20           ascertain a specific figure or percentage attributable  
21           to this particular type of survey?

22                  A. It, in all probability, will be  
23           fairly difficult and I haven't been able to confirm  
24           this yet and it may not be an issue at all, because at  
25           this point in time MNR is carrying out a fair number of

1 second-year survival assessments and, therefore,  
2 there, therefore, may be enough of a sample out there  
3 already to provide the database that is needed relative  
4 to MNR projects on company units and Crown management  
5 units for the state of the forest report.

6 So there is a possibility, and I just  
7 haven't had a chance to confirm this, that the number  
8 may be zero because what those tables are supposed to  
9 indicate in Exhibit 936 are the additional dollars we  
10 need to deliver those terms and conditions, and if  
11 there are enough second-year survival assessments  
12 ongoing right now, it may not be necessary to allocate  
13 any more dollars towards those types of assessments.

14 Q. Thank you. Dr. Euler, we marked as  
15 Exhibited 969 a memorandum from Mr. Stewart to the  
16 district managers in Algonquin Region and to the  
17 Director of the Leslie Frost Centre. Have you had a  
18 chance to review that document?

19 DR. EULER: A. Yes, I have.

20 Q. Are you familiar with it?

21 A. Basically I am, yes.

22 Q. You were asked some questions by Mr.  
23 Lindgren about a memorandum that was written by Mr.  
24 Christie and that memorandum was sent to, among other  
25 people, the Regional Director in Algonquin Region and

1       that discussed red-shouldered hawks. Do you remember  
2       that?

3                   A. Yes, I do.

4                   Q. And are you aware of the relationship  
5       between that document which is Exhibit 946 and the  
6       document that has just been marked Exhibit 969?

7                   A. Yes.

8                   Q. Can you explain that, please?

9                   A. Well, Mr. Christie is the head office  
10      person and part of his job is to give guidance to  
11      regional people about how to carry out duties of many  
12      kinds actually and, in this case, Mr. Christie is  
13      giving direction to field staff about how to deal with  
14      the issue of red-shouldered hawks.

15                  Then in turn, in this case, the Regional  
16      Director, Mr. Stewart, would have received the memo  
17      from Mr. Christie and Mr. Christie in turn would give  
18      direction to - this is staff - about how to deal with  
19      this issue.

20                  So Mr. Stewart is saying to his district  
21      managers, here's a problem and here's how I would like  
22      you to deal with it.

23                  Q. Thank you. Now, also with respect to  
24      red-shouldered hawks, Mr. Lindgren was asking you some  
25      questions about the inventory of red-shouldered hawks

1       and you were explaining to him that the Ministry is  
2       moving on several fronts to inventory red-shouldered  
3       hawks. Does this document assist in adding any  
4       information to that comment?

5                   A. Well, yes, it does. I think it gives  
6       some of the details about what people actually did in  
7       the field in response to these directions and  
8       activities on several fronts.

9                   So it points out, for example, during the  
10      spring of 1989, all districts in the Algonquin Region -  
11      and you should know that the Algonquin Region is very  
12      good red-shouldered hawk habitat - so all districts in  
13      that region undertook field surveys in preparation for  
14      the timber management plans that they were working on.

15                  Q. And it also indicates, as I  
16      understand it, the results of that year's surveys; is  
17      that right?

18                  A. Yes, it does.

19                  Q. Thank you.

20                  THE CHAIRMAN: Dr. Euler, one question.  
21      This was directed specifically to the Algonquin Region.

22                  DR. EULER: Yes.

23                  THE CHAIRMAN: And you are indicating  
24      that that is an area frequented by these particular  
25      species.

1 DR. EULER: Yes.

2 THE CHAIRMAN: What about all the other  
3 regions where red-shouldered hawks are prevalent, would  
4 they have also gotten similar direction?

5 DR. EULER: Yes, they would have and the  
6 Algonquin Region would be the centre of red-shouldered  
7 hawk activity, however, there are also red-shouldered  
8 hawks in our eastern region and a few in just the lower  
9 part of our northeastern region.

10 THE CHAIRMAN: So effectively the  
11 instructions would be essentially the same to all  
12 regions?

13 DR. EULER: Yes, that's right.

14 THE CHAIRMAN: And the instructions going  
15 then from the Regional Director to his field staff  
16 would be essentially parodying or the same throughout?

17 DR. EULER: Basically yeah, sure. Now,  
18 it just isn't as big a problem in the other regions  
19 because only little sections of the region have  
20 red-shouldered hawk, so the Regional Director might not  
21 think it was necessary to write every single because  
22 some districts don't even have hawks there themselves.

23 THE CHAIRMAN: Okay. But I guess what  
24 I'm trying to ascertain is, is that once sort of in the  
25 wildlife section goes out to the field at large, it

1           becomes a coordinative response; is that correct?

2           DR. EULER: Yes, that's correct.

3           THE CHAIRMAN: So wherever these species  
4           are likely to occur--

5           DR. EULER: Yes, yes.

6           THE CHAIRMAN: --the same type of action  
7           would also take place?

8           DR. EULER: Yes. Yes, that's right.

9           THE CHAIRMAN: Thank you.

10          DR. EULER: Then as we learn more about  
11          how to do it, because one of the things that is going  
12          to happen here, is we are going to learn more because  
13          of this process, then we will through another iteration  
14          of learning and bringing that knowledge into the  
15          management process.

16          MS. MURPHY: Q. And again, Dr. Euler,  
17          I'm going to ask you to look at Exhibit 948.

18          MS. MURPHY: And, Mr. Chairman, I have  
19          asked to have that provided to you. I would like you  
20          to have a look at one particular matter on that  
21          exhibit, that is a letter from Gord Pyzer to Dr. Ross  
22          Henderson and that was discussed in the  
23          cross-examination by Mr. Lindgren.

24          MRS. KOVEN: What is the exhibit number?

25          MS. MURPHY: It's Exhibit 948.

1 MS. BLASTORAH: Mr. Chairman, I spoke to  
2 Mr. Devaul and I think she put it in the pile there for  
3 you.

4 THE CHAIRMAN: Well, she put some in a  
5 pile, but my pile is all messed up.

6 MS. BLASTORAH: Okay.

7 THE CHAIRMAN: Well, it could be anywhere  
8 in the vicinity in the northern region.

9 MS. MURPHY: Well then, perhaps we can do  
10 without the document and I would just like to point  
11 out --

12 MS. BLASTORAH: I have an extra copy.  
13 (handed)

14 MS. MURPHY: Fine. Mr. Chairman, this is  
15 really for the purposes of the record. The first page  
16 of that letter indicates in the first paragraph on the  
17 fifth line that the letter is being sent in response to  
18 the concerns of Dr. Henderson and similar concerns  
19 forwarded by the Fairlane Environmental Protection  
20 Association.

21 And for the purposes of the record, Mr.  
22 Chairman, I would like you to make note that the  
23 Fairlane Environmental Protection Association is a  
24 party to this hearing and is listed on the parties  
25 list.

1                   Q. And, Dr. Euler, with respect to this  
2 particular matter and the questions that were put to  
3 you, what personal knowledge if any do you have about  
4 the specific issues that may have arisen between that  
5 specific group and the Ministry of Natural Resources  
6 district office in Kenora?

7                   DR. EULER: A. Oh, I would have no  
8 personal first-hand knowledge other than just this  
9 letter right here.

10                  MS. MURPHY: And just for your  
11 information, I have ascertained that there is a lengthy  
12 file with respect to this matter, and I certainly don't  
13 have no intention of getting that and asking Dr. Euler  
14 about it, and I would suggest that we would deal with  
15 that matter in Kenora as there are a number of details  
16 that should be covered, as I understand it.

17                  Q. With respect to the questions that  
18 were put, I do have one hypothetical question I would  
19 like you to deal with.

20                  Mr. Lindgren made a suggestion to you  
21 with respect to one of the species listed on the second  
22 page, the greater rattlesnake plantain. He asked you  
23 whether you agreed with him that that species is not  
24 known between Saskatchewan and Lake Superior, and you  
25 suggested that you couldn't answer that from memory,

1       but do you recall that exchange?

2                  DR. EULER: A. Yes, I do.

3                  Q. All right. For the purposes of my  
4 question, will you assume that he is right, that the  
5 greater rattlesnake plantain is not known to exist  
6 between --

7                  THE CHAIRMAN: This is a plant or an  
8 animal?

9                  MS. MURPHY: This apparently is a plant,  
10 sir.

11                 DR. EULER: I can confirm it's a plant,  
12 sir, if that is helpful.

13                 MS. MURPHY: Dr. Euler, can give you all  
14 kinds of interesting names for plants.

15                 DR. EULER: And birds.

16                 MS. MURPHY: Q. And birds. Let's assume  
17 that he is right, that that plant is not known to exist  
18 between Saskatchewan and Lake Superior, okay?

19                 DR. EULER: A. Yes, all right.

20                 Q. Now, given that assumption, as a  
21 manager, would your response be different in two sets  
22 of circumstances.

23                 First, a person in Kenora approached you  
24 and advises that he or she has located an occurrence of  
25 that species; and, second, a person in Kenora has not

1 located an occurrence of this species which is not  
2 known to exist between Saskatchewan and the lake, but  
3 suggests that you survey the management units to look  
4 for it in any event.

5                   Would your management response differ in  
6 those two sets of circumstances?

7                   A. Yes.

8                   Q. And can you explain that, please?

9                   A. Well, okay. In the first set of  
10 circumstances where I think the person is telling me  
11 that the plants exists out there, I would ask for  
12 evidence to try to see whatever evidence the person is  
13 presenting.

14                  THE CHAIRMAN: What if they bring in the  
15 plant, the plant you're looking for?

16                  MS. MURPHY: I would hope they wouldn't.

17                  MS. BLASTORAH: It would get on the  
18 endangered species list.

19                  THE CHAIRMAN: I guess that wasn't a fair  
20 question.

21                  DR. EULER: That's all right, Mr.  
22 Chairman, you are allowed those, I think.

23                  Well, see, you would ask for some sort of  
24 evidence and then you would make a judgment based on  
25 the evidence about the credibility of the claim. I

1 mean, many people say many things to the Ministry and  
2 you have to make some kind of judgment about the  
3 credibility of the claim.

4                   But then assume that it was valid and you  
5 felt that the person has reasonable grounds to believe  
6 it was there and that it was very possibly there, well  
7 then you would undertake an AOC planning process for  
8 it.

9                   MS. MURPHY: Q. Mm-hmm.

10                  DR. EULER: A. That would be my reaction  
11 as a manager, put it in the AOC planning process and  
12 deal with it depending on the technical details.

13                  Now, the other problem, if someone says  
14 it might be there and why don't you do a survey, would  
15 trigger a little different set of responses, in that  
16 you would have to evaluate your capability to do that  
17 survey and do you have the money, do you have the time.  
18 You would have to evaluate whether you could do it, you  
19 would have to look in the current literature and see  
20 what the probability of it being there was, and then  
21 you would make a different decision.

22                  You might well conclude, for example,  
23 after reviewing the evidence carefully that the cost of  
24 a survey weren't justified because the evidence that  
25 was presented was just not that compelling. That could

1       be a conclusion. On the other hand, if you concluded  
2       that the evidence was compelling that it had a  
3       reasonable probability of being there, then you would  
4       do whatever you could to get that survey done somehow,  
5       maybe through naturalists or through your money or  
6       however.

7                          Does that answer your question?

8                          Q. Yes, thank you.

9                          Mr. Gordon, Mr. Edwards asked you a  
10          number of questions about a particular matter that  
11          involved a regeneration agreement. He was asking you  
12          about what would occur in a certain situation when the  
13          Ministry suggested entering a regeneration agreement  
14          with a licensee and the licensee, in that particular  
15          situation, could not or it was not interested in  
16          entering that agreement.

17                         MS. MURPHY: And we are concerned that  
18          perhaps the concept of regeneration agreements may not  
19          be all that well understood. Can we look first of all  
20          at the Crown Timber Act, I believe your legislation was  
21          brought before you. I don't know if you will need it,  
22          but I want to indicate for you a section.

23                         THE CHAIRMAN: We exhibited that, didn't  
24          we?

25                         MS. MURPHY: Yes, that's right. It's in

1           Exhibit 918 I believe, the legislation.

2           THE CHAIRMAN: Okay. Ms. Blastorah, if  
3       you ever want to see this again (handed) grab it now.

4           MR. CASSIDY: Ransom demand.

5           MS. BLASTORAH: You must have the same  
6       filing system as Mr. Freidin.

7           MS. MURPHY: Q. I just to bring your  
8       attention to one particular section of the Crown Timber  
9       Act, section 27 sub (4), that indicates that:

10           "The Minister may enter into an agreement  
11       with a licensee for the promotion and  
12       maintenance of the productivity of the  
13       licence area by establishing regenerating  
14       and tending forests and employing  
15       silvicultural cutting systems to  
16       regenerate forests."

17           And do you understand that section to be  
18       the one that is referring to generally regeneration  
19       agreements?

20           MR. GORDON: A. That's my understanding.

21           Q. Do you think you can give us a short  
22       explanation of regeneration agreements, what they are,  
23       in what circumstances they are used, and who gets  
24       involved in them?

25           A. I suppose the simplest thing for me

1 to do is speak from my own experience. Obviously as  
2 much as possible the Ministry of Natural Resources  
3 wants to see companies involved in the regeneration  
4 effort and obviously that is one of the main reasons  
5 for the FMA program.

6 However, historically we didn't have the  
7 FMA program in place and, as well, it's not in place on  
8 every unit. And the Ministry of Natural Resources  
9 still, however, would like to see some of those non-FMA  
10 companies, if possible, involved in the regeneration  
11 program.

12 And, for example, what we did in Terrace  
13 Bay District is we approached a company in the late  
14 1970s and asked them to participate in the site  
15 preparation program, and so they signed a regeneration  
16 agreement with us. We negotiated a cost per hectare  
17 for doing the site preparation work and then the  
18 company carried out that work.

19 THE CHAIRMAN: Mr. Gordon, I take it the  
20 agreement dealt with in this section 27(4) is not the  
21 same thing as an FMA agreement?

22 MR. GORDON: Definitely not.

23 THE CHAIRMAN: Right. And you are  
24 indicating that you want some of these non-FMA  
25 agreement holders to enter into regeneration agreements

1       are. You would like them to participate in that kind  
2       of program; is that what you said?

3                    MR. GORDON: That's correct. For  
4       example, you know, in a given part of the province or  
5       in a given management unit you may have trouble  
6       attracting certain types of equipment to carry out site  
7       preparation.

8                    THE CHAIRMAN: Okay. Well, I guess my  
9       question is, is that you have got the section, you have  
10      got the statutory authority for the Minister to enter  
11      into these agreements, why is it not tougher than that,  
12      why is it not a section which indicates that the  
13      company, if the Minister deems it appropriate, shall  
14      enter into a regeneration agreement; why is it left as  
15      lose as giving the company the option of saying:" We  
16      are just not interested, and why isn't that tied into  
17      the Ministry granting the allocations in the first  
18      place and saying to itself that, if we are going to let  
19      you cut and carry on activities, we also feel that you  
20      should be involved in regeneration, site preparation  
21      activities and that sort of the other side of the  
22      allocation considerations that we enter into?

23                  MR. GORDON: I don't know if I can really  
24      answer that. I would assume that it was written that  
25      way for historical reasons. I would suggest to you

1           that the emphasis of the Crown Timber Act was to  
2           authorize the cutting of Crown timber.

3                         THE CHAIRMAN: Right, and I think you are  
4                         probably right, it is historical, but we are past the  
5                         historical stage in the sense that you have the FMA  
6                         program in existence now for a few years, I mean, why  
7                         for instance hasn't there been consideration to having  
8                         this amended?

9                         MS. MURPHY: Perhaps if I ask a couple of  
10                  questions arising from your questions it might help,  
11                  because there is, as it seems to me, clearly some  
12                  confusion over what this regeneration agreement is  
13                  intended to do.

14                         Q. Would you agree with me essentially  
15                  that the regeneration agreement is a contract?

16                         MR. GORDON: A. Yes.

17                         Q. When the licence holder undertakes  
18                  the activities they paid?

19                         A. Yes.

20                         Q. Are those activities activities that  
21                  the Ministry in those Crown and company management  
22                  units would have normally undertaken by entering into a  
23                  contract with any other person?

24                         A. Normally that will be the case, yes.

25                         Q. As I understand it, and perhaps to

1 help to clarify, the main point here is that where the  
2 Ministry intends to enter into a contract with the  
3 licensee who is already on the unit, the statute allows  
4 them to do that without going through a tendering  
5 process.

6 A. That's correct. That's correct.

7 Q. And that there may be, in certain  
8 circumstances, a benefit to having the licence holder  
9 who is already on the unit carry out the work rather  
10 than some other contractor; is that the point?

11 A. That's correct. Obviously there  
12 could be and have been cost efficiencies for the  
13 Ministry because that company may have some available  
14 tractor time, they have got tractors there to build  
15 roads, et cetera, and therefore --

16 THE CHAIRMAN: Yes, but isn't it more  
17 than that? I mean, I think the Board appreciates the  
18 contractual obligations, the tendering process and all  
19 of that. Isn't there a psychological reason for having  
20 companies who are also engaged in harvesting involved  
21 in the putting back?

22 MR. GORDON: Yes, I would agree.

23 THE CHAIRMAN: Involved in the site  
24 preparation and the necessity of having to regenerate  
25 and the necessity of doing it right in terms of the

1       taking away, the harvesting, or they are going to be  
2       nailed with the additional cost if their regeneration  
3       efforts fail?

4                    MR. GORDON: That's correct. And that is  
5       why we have the FMA program, and I guess the difference  
6       perhaps between you and myself right now might be just  
7       as to how far we are going to push the FMA program.

8                    THE CHAIRMAN: Well, that is why I asked,  
9       the two agreements are different and you may not want  
10      to include all of the other obligations within a full  
11      FMA program and expand it too quickly before you can  
12      administratively perhaps even handle it, but that in  
13      the Board's view doesn't necessarily answer the  
14      question why the regeneration agreements for non-FMA  
15      holders should not almost be made part of the package  
16      in getting their allocations to get them involved in  
17      the regeneration side, without necessarily allowing  
18      them the option of saying: We will cut and we will do  
19      it in accordance with timber management plans but we  
20      don't want to take part in either site preparation or  
21      regeneration, because we are not going to enter an  
22      agreement with you.

23                  MR. GORDON: Yeah. I really can't say  
24      much more than that. I know on some units -- excepting  
25      that on some units we have got very small operators who

1 can only afford to buy their harvesting equipment.

2 THE CHAIRMAN: Well, you know, exceptions  
3 can be made. We are talking about the ones where you  
4 yourself have said, you have approached them to do it  
5 because you think that they (a) have got the equipment,  
6 could probably do the job, psychologically maybe should  
7 be involved in that program, but for whatever reason  
8 they say: Thanks, but no thanks. It's that situation  
9 that I'm questioning.

10 MR. GORDON: Well, very clearly it's my  
11 understanding we don't have a big stick.

12 THE CHAIRMAN: Maybe you should. Okay.

13 MS. MURPHY: Q. Well, just two things  
14 then. In your experience, what would be the reason  
15 first of all that the licensee may decline that  
16 opportunity?

17 MR. GORDON: A. The reason that the  
18 licensee declined the opportunity in Terrace Bay  
19 District was that for the work that the Ministry was  
20 asking them to do, the equipment that was necessary was  
21 already allocated to doing other things.

22 Q. And are there situations where the  
23 Ministry might decline that opportunity?

24 A. Yes. Obviously there may be  
25 instances where we do not want to enter into with a

1 company because it may cost us more.

2 Q. Thank you. Again, Mr. Gordon. My  
3 friend Ms. Seaborn was asking you some questions, these  
4 were questions about local monitoring, and she was  
5 suggesting to you that for the purposes of reporting  
6 you could, I think to use her term, roll up compliance  
7 effects and effectiveness monitoring, and suggested to  
8 you that it didn't matter about the terminology.

9 My question to you is this: Is the  
10 distinction between compliance effects and  
11 effectiveness monitoring simply a matter of terminology  
12 or semantics, or is it a matter of substance?

13 A. It's very clearly a matter of  
14 substance.

15 Q. Does the use of one of those terms or  
16 in what way would the use of one of those terms  
17 influence what the person on the ground thought they  
18 were being expected to do?

19 A. Well, for example, if you were asking  
20 someone, a technician who ought to do compliance  
21 monitoring, I would suggest that that is fairly  
22 straightforward and you may not need a person of great  
23 experience to do that: Did the company cut in the  
24 right place, did they cut the reserve around the lake,  
25 that person, all they would have to do is be able to

1       read a map and get to that location and understand what  
2       area is under approval.

3                     To assess the effects of that operation  
4       on the site or the effectiveness of the prescription  
5       around the lake to protect the lake for whatever  
6       reason, I would suggest that it requires another level  
7       of thinking, and there is no question some of our  
8       people are very capable of that level of thinking, but  
9       we are going to have an awful lot of people out there  
10      doing good compliance monitoring who don't have that  
11      capability to do effects and effectiveness monitoring.

12                  And, where possible, because we are  
13      trying to work on efficiencies, where possible, we will  
14      be trying to provide training to those individuals so  
15      they can do that much more when they are out there on  
16      the site.

17                  Q. But you would you be expecting them,  
18       as I understand your evidence, to be doing something  
19       qualitatively different?

20                  A. That's correct.

21                  Q. Thank you. Again, Mr. Gordon. From  
22      Ms. Seaborn there was a suggestion that if an effect is  
23      unacceptable - and I will use her terms in quotes - "if  
24      an effect is unacceptable", she suggested you could  
25      change your guidelines or your compliance requirements.

1                   Now, in response you indicated that you  
2 could change your timber management plan, and I  
3 understood from my notes that you said you could change  
4 your timber management plan objectives, but in any  
5 event the change your timber management plan and  
6 monitor compliance with that.

7                   A. That's correct.

8                   Q. Ms. Seaborn then repeated, and as my  
9 notes indicate: Then is that the same thing, you could  
10 change your guidelines or your compliance requirements,  
11 and you agreed.

12                  Could you please indicate for me in that  
13 context what the phrase 'compliance requirements' meant  
14 to you?

15                  A. Well, I looked at it very simply and  
16 what I assumed the discussion was meaning was, you have  
17 detected in the past five years a problem and,  
18 therefore, in your new plan you have decided you are  
19 going to go in a different direction relative to  
20 specific circumstances; and, therefore, once that plan  
21 is approved you have to deliver that plan and, so  
22 therefore, you would be monitoring compliance against  
23 that new plan.

24                  Q. So the compliance requirements that  
25 you were talking about there were the things you would

1 have to do in order to monitor compliance with the  
2 plan; is that right?

3 A. You would be monitoring compliance to  
4 ensure consistency with that new plan.

5 THE CHAIRMAN: But the new plan would  
6 have to have been approved in accordance with the  
7 guidelines, and if you are going in a different  
8 direction you would probably have had to have changed  
9 the guidelines; is that not correct?

10 MR. GORDON: No, I don't think that is  
11 the case. Obviously if you want to go in a major new  
12 direction, which is outside the bound of the  
13 guidelines, then either the guidelines -- whatever  
14 guidelines we are talking about would have to be  
15 changed or you would have to -- and if they hadn't been  
16 changed to allow you to do this and you still wanted to  
17 do that, then you would have to highlight that in the  
18 plan and let that go up through the approval process.

19 THE CHAIRMAN: Okay. Get approval for  
20 deviation from the guidelines?

21 MR. GORDON: That's right.

22 THE CHAIRMAN: In the new plan.

23 MR. GORDON: That's right.

24 THE CHAIRMAN: Okay.

25 MR. MARTEL: Or you could change the

1           prescription.

2                            MR. GORDON: Yeah. I was thinking of the  
3                            change, without anything in mind, at a much lower  
4                            level, you know, where you plan to do something and  
5                            there may be certain sites where you wanted to plant  
6                            them in the past five-year plan, you had found that for  
7                            whatever reason it hadn't been effective and,  
8                            therefore, you wanted to do something slightly  
9                            different in the new plan. It didn't go against any  
10                          guideline but once you set that new objective you would  
11                          monitor compliance against it.

12                         MS. MURPHY: Q. Mr. Cary, Ms. Seaborn  
13                          suggested to you the possibility of putting the area  
14                          inspection report form in the Timber Management  
15                          Planning Manual; do you recall that?

16                         MR. CARY: A. Yes, I do.

17                         Q. I have a question. First of all,  
18                          what difference is there, if any, in kind between the  
19                          area inspection report forms, cut inspection report  
20                          forms, free to grow assessment report forms, survival  
21                          assessment report forms or other forms that might be  
22                          used for technical surveys?

23                         A. There is no difference, they all  
24                          report things.

25                         Q. And, from your experience, how common

1       is it for forms of this nature to be revised?

2                   A. They are revised from time to time.

3       When an update is needed or when some circumstances  
4       change, then the forms are revised.

5                   Q. Thank you.

6                   THE CHAIRMAN: Is the only purpose of  
7       putting it in the manual to ensure consistency across  
8       the province?

9                   MR. CARY: No. We can achieve  
10      consistency in other ways by putting it into policy and  
11      procedure.

12                  THE CHAIRMAN: That's right. But I mean,  
13      what would the advantage be of having the actual  
14      wording of the form in the manual?

15                  MR. CARY: No distinct advantage.

16                  MS. MURPHY: Thank you.

17                  THE CHAIRMAN: But having said that,  
18      could a statement be made in the manual, like not have  
19      the form, but reference be made to the fact that there  
20      will be area inspections and there will be a summary  
21      like a textual description as to what the major  
22      components of the form would be without having the  
23      actual form in there?

24                  MR. CARY: That would be a good  
25      suggestion.

1                   THE CHAIRMAN: Because I think what Ms.  
2 Seaborn's concern is, is that there be a requirement  
3 that this summary be carried out in terms of a set  
4 format. Is that --

5                   MS. MURPHY: No, we are talking about two  
6 different documents. The area inspection report form  
7 is one thing, the summary you were talking about, Table  
8 4.12.X, is the summary.

9                   THE CHAIRMAN: But both I think Ms.  
10 Seaborn, as I understood it, was worried about the  
11 format.

12                  MRS. KOVEN: She was worried about the  
13 fact that area inspection forms don't find their way  
14 into the timber management plan in tabular form whereas  
15 Table 4.12.X would, and it would be easier for the  
16 public to follow.

17                  MS. MURPHY: I think we are talking about  
18 a couple of different issues.

19                  Q. There was one question - and correct  
20 me if I'm wrong - there was one question, would the  
21 format for Table 4 -- what is now called Table 4.12.X,  
22 would the format for that table find its way into the  
23 Timber Management Planning Manual, and the answer to  
24 that question was yes.

25                  MR. CARY: A. Yes.

1                   MS. MURPHY: And that table will be in a  
2 timber management plan and, therefore, the format for  
3 that table will be in the Timber Management Planning  
4 Manual.

5                   THE CHAIRMAN: Right. Now we are dealing  
6 with the reports.

7                   MS. MURPHY: There was a separate  
8 question, would the form for area inspection reports,  
9 that form, be put into the Timber Management Planning  
10 Manual. That is a separate question.

11                  And the Chairman's question in the end  
12 was: What would be the value of doing that. And I  
13 believe the witness said he didn't know of the value of  
14 putting the area inspection report --

15                  THE CHAIRMAN: But I thought Ms.  
16 Seaborn's concern with that - perhaps you could just  
17 answer, Ms. Seaborn - is that you want to ensure that  
18 the format of the report, not the summary, is always  
19 consistent across the province and, therefore, if it  
20 were in the manual that would be a direction to  
21 everybody in the field, that is the way you complete a  
22 report; like, that is what the form for the report  
23 looks like, and it's annexed. Is that --

24                  MS. SEABORN: Certainly that is our  
25 concern, Mr. Chairman. It may be that your suggestion

1       that an outline of what should be involved in terms of  
2       an area inspection report and a summary form in the  
3       manual would be good enough.

4                  Our concern is that at the end of this  
5       process what is going to survive the approval is going  
6       to be the Timber Management Planning Manual as the  
7       guiding document to show a common planning process  
8       across the area of the undertaking.

9                  So in the example of area inspection  
10      forms, if this is in fact a vital component of  
11      monitoring for the Ministry, then we would like to see  
12      some consistency across the area of the undertaking.

13                 THE CHAIRMAN: Well, certainly the manual  
14       will be one of the principal documents that survive,  
15       but I wouldn't suggest that it's the only one that will  
16       survive this hearing.

17                 MS. MURPHY: Absolutely.

18                 MS. SEABORN: No, but it's going to be  
19       the means. As I understand MNR's position, is that  
20       they do not want to amend the blue book, the Class EA,  
21       they want to amend the Timber Management Planning  
22       Manual and along with that will be the terms and  
23       conditions.

24                 THE CHAIRMAN: Well, nothing has been  
25       determined on that yet, you know, I think this will be

1           the subject of some discussion at the end of the case.  
2           And the Board - it hasn't really thought its way  
3           through all of this obviously - but the Board might  
4           well order or request that the EA be amended  
5           accordingly in accordance with the Board's decision if  
6           the Board's decision alters substantially parts of the  
7           EA, so that you end up at the end of the day with a  
8           document, as well as other documents like the manual.  
9           much more in the form of an EA that has not gone  
10          through the hearing process.

11                 MS. SEABORN: I understand that, Mr.  
12                 Chairman, and the reason why our questions are put in  
13                 the context of the Timber Management Planning Manual is  
14                 keeping in mind MNR's desire in their terms and  
15                 conditions to amend that manual and append terms and  
16                 conditions to it rather than to amend the Class EA.

17                 MS. MURPHY: And if I might respond, if  
18                 the concern is that this kind of report with certain  
19                 essential elements should be consistent, then I will  
20                 suggest to you and will argue that that belongs in the  
21                 terms and conditions of approval which is the thing  
22                 that will survive this environmental assessment, a  
23                 condition that says --

24                 THE CHAIRMAN: Among other things.

25                 MS. MURPHY: Well, certainly but...

1                   THE CHAIRMAN: Including all of us, for  
2 instance.

3                   MS. MURPHY: Well, I hope so. I'm  
4 trying. But I would suggest to you that is essentially  
5 there that the elements that are required should be  
6 found in the terms and conditions of approval.

7                   THE CHAIRMAN: Well, we will sort that  
8 out at a later date.

9                   MS. MURPHY: Thank you.

10                  THE CHAIRMAN: I think the real concern  
11 here is consistency of application across the area of  
12 the undertaking.

13                  MS. MURPHY: Q. Now, Mr. Cary, Ms.  
14 Seaborn was also asking you some questions about Table  
15 4.12.X and your evidence has been that that table  
16 essentially reports the results of inspections on all  
17 areas of concern over a five-year period; is that  
18 correct?

19                  MR. CARY: A. That's correct.

20                  Q. In your evidence-in-chief, Mr. Cary,  
21 you indicated that there was a range between -- I  
22 believe your evidence-in-chief was between 10 and 200  
23 areas of concern inspected per year?

24                  A. That's right.

25                  Q. And in response to an enquiry from

1       Mr. Lindgren you agreed that in some areas that would  
2       mean over the five-year period a thousand areas of  
3       concern?

4                   A. I believe that is what I said.

5                   Q. And is it your information that there  
6       could be a thousand areas of concern over a five-year  
7       period?

8                   A. Yes, and in fact some information  
9       that I have reveals that a draft timber management plan  
10      for the Dog River/Mattawan FMA contains 1438 areas of  
11      concern for the five-year term.

12                  THE CHAIRMAN: What was the name of that  
13      area?

14                  MR. CARY: The Dog River --

15                  THE CHAIRMAN: Dog River.

16                  MR. CARY: D-o-g, Dog River/Mattawan  
17      forest management Agreement, it's a draft timber  
18      management plan at this point in time.

19                  MS. MURPHY: Q. And I also understand  
20      from your evidence-in-chief that it is possible that  
21      there would be more than one area inspection report for  
22      an individual area of concern; is that correct?

23                  MR. CARY: A. That's correct.

24                  Q. Mr. Cary, of a practical matter, how  
25      does that information influence the amount of detail

1           that could reasonably be provided in a table format?

2           A. It would make the table  
3           pretty unmanageable. We have to use a summary form in  
4           the report of past forest operations. It would be a  
5           mountain of paper, a huge amount of area inspection  
6           reports and it would become an absolute -- it would  
7           become very difficult to handle and very difficult to  
8           understand.

9           Q. And a similar question to Mr. Gordon  
10          about normal operating areas. I understood from Ms.  
11          Seaborn that she was enquiring of you about the ability  
12          to report results of all area inspection reports, free  
13          to grow assessments, second-year survival assessments,  
14          and other technical surveys at the stand level in a  
15          table format in a timber management plan. Do you  
16          recall those questions?

17           MR. GORDON: A. Yes, I do.

18           Q. I understand that you were involved  
19          in the development of a timber management plan for the  
20          Big Pic Management Unit; is that correct?

21           A. That's correct.

22           Q. And was there a development during  
23          that plan of a stand listing?

24           A. Yes, there was.

25           Q. And I am going to ask you to reach

1 back in your memory and try to assist all of us by  
2 giving us some idea in that plan, for example, how many  
3 stands we are talking about.

4 How many stands would have been scheduled  
5 for operations over the five-year period in that timber  
6 management plan, for example?

7 A. A lot, and in the order of -- very  
8 difficult, but maybe 5- to 10,000 stands.

9 Q. Thank you. Would that understanding  
10 influence your recommendation to this Board as to  
11 whether the results of all inspections on all of those  
12 stands should be listed in a timber management plan?

13 A. I would suggest - although I know  
14 someone has said that everything is possible - I would  
15 suggest that that's an impossibility.

16 Q. Thank you. Dr. Euler, Ms. Seaborn  
17 asked you a question. Unfortunately it was right at  
18 the end of her cross-examination and I don't think I  
19 actually got it down right and I hope you can help me  
20 with it.

21 I understood that Ms. Seaborn was asking  
22 you, in the study with respect to the moose guidelines  
23 would you be using the moose guidelines which make  
24 reference to 130 hectares or would you be using the  
25 interim direction which is essentially a reporting

1 requirement? Do you remember that question?

2 DR. EULER: A. Yes, I do.

3 Q. Can you explain to me whether there  
4 will be more than one size of clearcut in the areas  
5 that will be studied in that assessment?

6 A. Well, the study areas have not yet  
7 been picked. It is certainly very possible that there  
8 will be other sized clearcuts in the study areas, very  
9 possible.

10 Q. So I was just confused. I was not to  
11 take your answer to mean that all clearcuts, for  
12 example, in the study area would be 130 hectares?

13 A. Well, that's true. See, while there  
14 are several things going on here in that the interim  
15 guidelines are a reporting relationship and they don't  
16 really affect the recommendations in the guidelines,  
17 It has to do with what you report to which Assistant  
18 Deputy Minister, and what we are trying to do is test  
19 the principles that are in the guidelines and one of  
20 those principles is that based on knowledge we have 130  
21 hectares seems to be the most optimum clearcut size.

22 Well, we want to test that principle and  
23 get some knowledge about it: Is it true, does it hold  
24 up over a variety of circumstances and situations.

25 And so in testing it you may do several

1 things on the ground that that may involve clearcuts of  
2 different sizes. And so it was a little difficult to  
3 answer that question. I answered it with just a  
4 straight yes because I felt that was the best way to  
5 answer it the way it was put.

6 It is going to be hard to find study  
7 areas that are perfectly laid out based on the  
8 guidelines, for example, because it is very seldom that  
9 the guidelines are actually applied in their strictest  
10 of application.

11 Q. And if you were to attempt to assess  
12 that concept in the guidelines, would you of necessity  
13 have to look at clearcuts of various sizes?

19 MS. MURPHY: Okay, thank you. Just one  
20 moment. Just before I finish, I haven't had a chance  
21 to talk to you. Does anyone here have any undertakings  
22 that they would like to get rid of before we go away?

23 (no response)

24 No. Oh, that's unfortunate.

25 I would like on the record that there are

1       a number of witnesses here who owe me Christmas  
2       presents. And those are all my questions.

3 THE CHAIRMAN: Thank you, Ms. Murphy.

4                             Thank you, Panel. You will be delighted  
5                             to be finished with your task. I don't know how many  
6                             of you we will see again throughout the rest of the  
7                             case, but the Board appreciates your attendance and  
8                             wishes you the best for the holiday season.

9 Thank you.

10 THE PANEL: Thank you.

11 --- (Witness panel withdraws)

12 THE CHAIRMAN: Very well, ladies and  
13 gentlemen, we will adjourn for the week and we will be  
14 commencing at 9:00 a.m. at the Board's hearing room on  
15 Monday.

16 Thank you.

17        ---Whereupon the hearing adjourned at 2:20 p.m., to be  
18                  reconvened on Monday, December 4th, 1989, commencing  
                at 9:00 a.m., at the Offices of the Environmental  
                Assessment Board, Toronto, Ontario.

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